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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 448

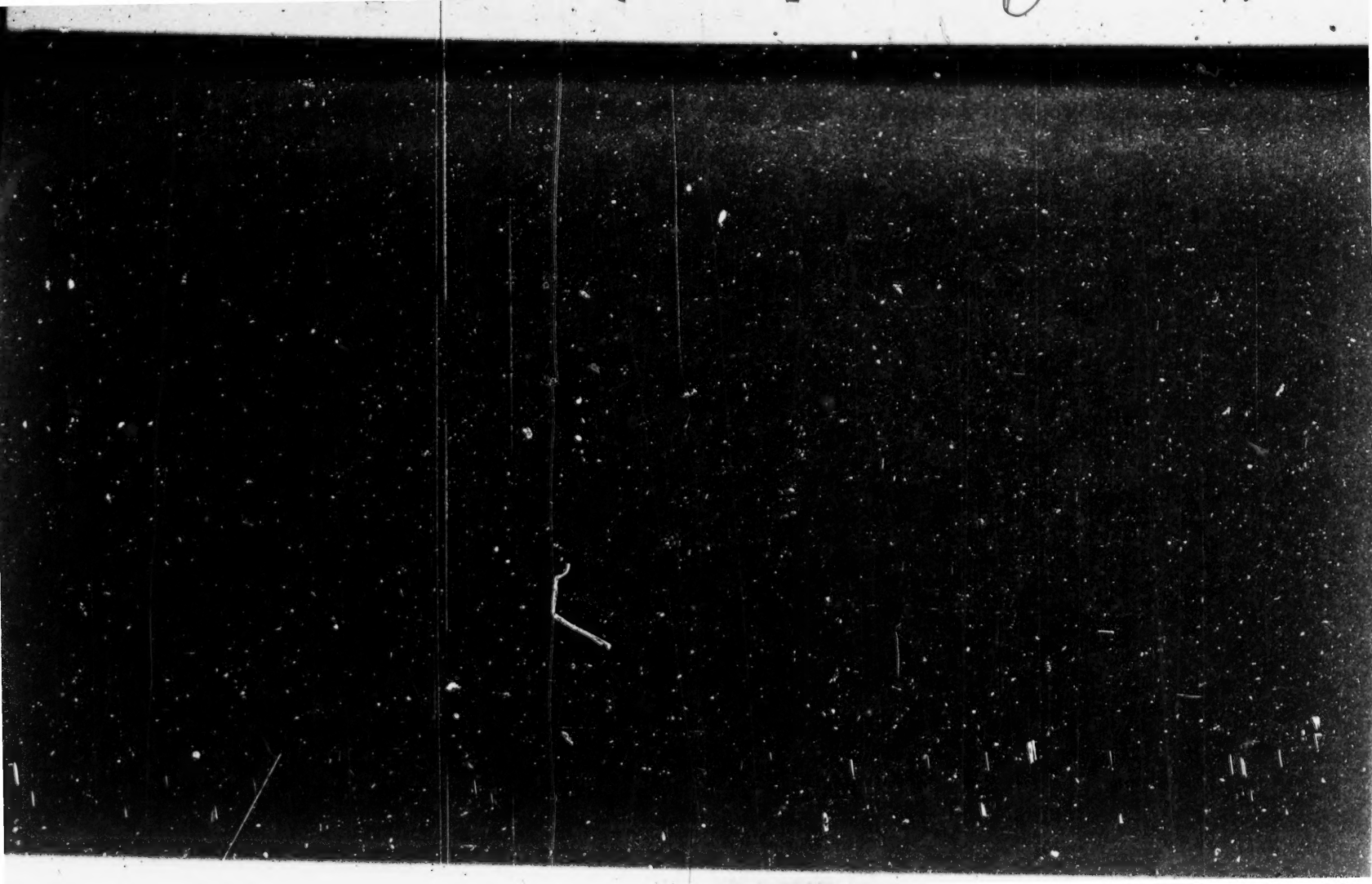
DAVID I. WILENTZ, J. H. THAYER MARTIN AND WALTER R. DARBY, ETC., ET AL., APPELLANTS,

vs.

SOVEREIGN CAMP, WOODMEN OF THE WORLD

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

FILED OCTOBER 31, 1938.



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INDEX.

	Original	Print
cord from D. C. U. S., District of New Jersey	1	1
Docket entries	1	1
Bill of complaint	3	3
Affidavit verifying bill of complaint and in support of application for interlocutory injunction	15	21
Exhibit "A"—Minutes of Municipal Finance Commission meeting of February 28, 1936	28	44
Exhibit "B"—Same, January 31, 1936	29	46
Exhibit "C"—Letter, Stevens to Keown, February 18, 1936	30	47
Exhibit "D"—Minutes of Municipal Finance Commission meetings of January 31, 1936 and February 14, 1936	31	49
Exhibit "E"—Extract from minutes of a special administrative meeting of Municipal Finance Commission of October 11, 1935	37	60
Subpoena and marshal's return	38	61
Order to show cause	40	62
Order of continuance	41	63

D & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 12, 1939.

—8516

	Original	Print
Record from D. C. U. S., District of New Jersey—Continued.		
Answer of defendants, Earl Kircher et al	43	64
Answer of defendants, David T. Wilentz et al	55	74
Opinion, Avis, J.	66	81
Order for substitution of attorney	77	89
Findings of fact and conclusions of law	79	90
Final decree	86	95
Petition for appeal	94	100
Assignments of error	96	101
Order allowing appeal	108	110
Citation and service (omitted in printing)	110	
Stipulation as to facts	113	111
Exhibit 2—Order of Supreme Court for Camden County, May 15, 1934	118	119
Exhibit 3—Bond issued by Board of Education	119	121
Exhibit 4—Writ of execution and return	120	123
Exhibit 5—Letters from Arthur T. Vanderbilt to Board of Assessments and Board of Taxation, January 3, 1936	122	125
Exhibit 6—Letter, Driver to Vanderbilt, January 6, 1936	123	126
Exhibit 7—Letter, Keown to Vanderbilt, February 24, 1936	123	127
Exhibit 12—Letter, Keown to Skillman, February 8, 1936	124	127
Narrative statement of evidence	125	128
Caption and appearances	125	128
Testimony of Morris Mather	125	129
Frederick L. Sattley	133	134
Arthur Grant	145	143
John E. Woodbridge	150	146
Arthur Robinson	152	147
Frank L. Gary	154	149
Lawrence E. Chermak	156	150
Exhibit "P-1"—Statement of setting prices, etc.	157	150
Exhibit "P-2"—Comparison of yield basis prices	158	151
Exhibits "D-1" & "D-2"—Letters from Committee for Bondholders, January 21, 1936 and March 9, 1936	159	152
Exhibit "D-3"—Comparison of basis figures	165	155
Statement of evidence in case of Barker et al. vs. Township of North Bergen et al., No. E-5025	166	155
Caption and appearances	166	155
Testimony of Walter R. Darby	166	156
Statement of evidence in case of Sovereign Camp, etc., vs. Board of Education et al., in mandamus	173	161
Caption and appearances	173	161
Testimony of Frank L. Gary	174	162
Exhibit R-1—Borough of Runnemede—1936 Budget	198	182
Exhibit "R-2"—Borough of Runnemede—School Budget, 1936-37	190	183

	Original	Print
Record from D. C. U. S., District of New Jersey—Continued.		
Narrative statement of evidence—Continued.		
Statement of evidence in case of Sovereign Camp, etc., vs. Board of Education et al., in mandamus—Continued		
Exhibit "R-3"—Bonds purchased by Borough of Runnemede, 1954	200	184
Exhibit "R-4"—Financial statement, 1926 to 1935, inc.	201	185
Exhibit "R-5"—Borough of Runnemede—Character of bonded debt, etc., December 31, 1935	202	186
Exhibit "R-6"—Same for School District of Runnemede	203	186
Statement of evidence in case of N. & W. Ry. Co. vs. Township of Chester et al., in mandamus	204	187
Caption and appearances	204	187
Testimony of Frank L. Gary	205	180
Exhibit 17—Statements of cash in current and trust accounts on hand, etc., for various municipalities	210	191
Exhibits 18-a to 18-q, inc.—Same	217	197
Exhibit 14—Excerpts from minutes of Municipal Finance Commission acting for Borough of Runnemede	227	203
Exhibits 16-a to 16-q, inc.—Financial records for various municipalities	389	329
Stipulation as to transcript of record	405-a	347
Citations with service (omitted in printing)	406	
Orders extending time (omitted in printing)	411	
Clerk's certificate (omitted in printing)	423-a	
Statement of points to be relied upon and designation as to printing record	424	349

[fol. 1]

IN UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

In Equity. #E-5515

SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD

vs.

DAVID T. WILENTZ, Attorney General of the State of New Jersey; J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, and Walter R. Darby, Commissioner of Municipal Accounts of the State of New Jersey, as and Constituting the Municipal Finance Commission of the State of New Jersey; Earl Kircher, Conrad Weber and William G. Hirsch, Members of the Board of Assessors of the Borough of Runnemede, N. J., and Albert W. Spencer, Tax Collector of the Borough of Runnemede, New Jersey

DOCKET ENTRIES

June 29, 1936.	Bill of Complaint filed.
" " "	Order to Show Cause for Restraint filed. (Statutory Court.)
" 30, "	Subpoena issued.
July 8, "	Subpoena returned, and filed. (See Subpoena for Services.)
" 9, "	Hearing on Motion for Preliminary Injunction. Adjourned to day to be fixed. (Statutory Court.)
" 17, "	Order of Continuance filed.
" 31, "	Answer filed. (Muncipal Finance Commission.)
Aug. 1, "	Answer of Earl Kircher, Conrad Weber and Wm. G. Hirsch, & Albert W. Spencer, filed.
" 6, "	Notice fixing Place filed. (Newark.)
Oct. 29, "	Stipulation of Facts filed.
" " "	Statutory Court Hearing Continued. Motion to remit Case to District Judge. Decision Reserved. (Circuit Judge Davis—District Judges Avis and Forman.)
Mar. 21, 1938.	Opinion filed. (Avis.)
May 24, "	Order of Substitution of Attorney for Defendant filed.

[fols. 2-4] Docket Entries—Continued

June	6,	1938. Findings of Fact and Conclusions of Law filed.
"	"	" Final Decree for Restraint only, filed.
Aug.	29,	" Assignment of Errors filed.
"	"	" Petition of Appeal to U. S. Supreme Court, filed.
"	"	" Order Allowing Appeal to U. S. Supreme Court, filed,
"	"	" Statement under Rule 12 of the Rules of the Supreme Court of United States filed.
"	"	" Citation issued.
"	"	" Assignment of Errors filed.
"	"	" Petition for Appeal to U. S. Circuit Court of Appeals filed.
"	"	" Order Allowing Appeal to U. S. Circuit Court of Appeals, filed.
"	"	" Citation issued.
"	30,	" Bonds filed. (2).
"	"	" $250 Deposited into Registry for Appeal to U. S. Supreme Court.
"	"	" $250 Deposited into Registry for Appeal to U. S. Circuit Court.
Sept.	12,	" Order Extending Time to Transmit Record to Supreme Court. Copy filed.
Oct.	10,	" Citation with Acknowledgment attached. Copy filed. (Forwarded to Supreme Court.)
"	"	" Order Extending Time to Transmit Record to Supreme Court. Copy filed.
"	"	" Order Extending Time to Transmit Record to Supreme Court. Copy filed.
"	11,	" Citation with Acknowledgment forwarded to Circuit Court. Copy filed.
"	"	" Order Extending Time to Transmit Record to Circuit Court. Copy filed.
"	"	" Order Extending Time to Transmit Record to Circuit Court. Copy filed.
"	27,	" Narrative Transcript of Testimony, filed.
"	"	" Stipulation as to service of Appeal papers, filed.
"	"	" Stipulation re praecipe, filed.

[fol. 5] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

[Title omitted]

BILL OF COMPLAINT—Filed June 29, 1936

To the Honorable the Judges of the United States District Court for the District of New Jersey:

Count One

1. Complainant Sovereign Camp of the Woodmen of the World, is now, and at all times hereinafter mentioned was, a fraternal benefit life insurance association organized and existing under and by virtue of the laws of the State of Nebraska, with its main office and principal place of business in the City of Omaha, Nebraska, and said complainant is a citizen and resident of the State of Nebraska.

2. Defendant David T. Wilentz is Attorney General of the State of New Jersey; defendant J. H. Thayer Martin is State Tax Commissioner of the State of New Jersey; defendant Walter R. Darby is Commissioner of Municipal Accounts of the State of New Jersey, and as such Attorney General, State Tax Commissioner and Commissioner of Municipal Accounts said defendants constitute the Municipal Finance Commission of the State of New Jersey created by Chapter 340 of the Laws of 1931 of the State of New Jersey as amended and supplemented. Defendants Earl Kircher, Conrad Weber and William G. Hirsch are members of and constitute the Board of Assessors of the Borough of Runnemede, New Jersey, and defendant Albert W. Spencer is Tax Collector of the Borough of Runnemede, New Jersey. Each of said defendants is a citizen and resident of the State of New Jersey and of the District of New Jersey.

3. This is a suit of a civil nature in equity and is wholly between citizens of different States. It is, moreover, a suit arising under the Constitution of the United States, as hereinafter more fully appears.

4. The matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of $3,000.00.

5. Prior to, to wit, the 15th day of May, 1934, the Borough of Runnemede, a municipality of the State of New Jersey, had defaulted for over sixty days in the payment of the principal or interest of certain of its outstanding notes or bonds, and in compliance with the provisions of Chapter 340, Laws of New Jersey 1931, as amended and supplemented, a certified copy of a resolution adopted by the governing body of said Borough of Runnemede, New Jersey, reciting in general terms that due to unusual conditions the municipality was not in a position to meet its obligations when due in spite of the endeavors of its officers, and petitioning that the said Municipal Finance Commission function in said municipality, was filed with Honorable Frank Lloyd, a Justice of the Supreme Court of New Jersey.

6. Thereafter, and on, to-wit, the 15th day of May, 1934, after summary investigation, said Justice Frank Lloyd made and entered an order that said Borough of Runne- [fol. 6] mede, New Jersey, was unable to meet its obligations, which order, together with the petition above described, were filed in the office of the Clerk of the Supreme Court of New Jersey.

7. Thereupon said Municipal Finance Commission commenced to function in the said Borough of Runnemede, New Jersey, and has since been and now is functioning therein.

8. In and by the terms and provisions of Chapter 195, Laws of New Jersey 1935, as amended and supplemented, it is provided that whenever the Municipal Finance Commission shall function in any municipality and there is a school district coterminous with such municipality governed by the provisions of Article VII of an act entitled "An Act to establish a thorough and efficient system of free public schools", etc., approved October nineteenth, one thousand nine hundred and three, such school district and the board of education thereof shall be subject to all the provisions of the act to which said Chapter 195 is a supplement, being Chapter 340 of the Laws of New Jersey 1931, as theretofore or thereafter amended and supplemented.

9. In and by the terms and provisions of Chapter 340, Laws of New Jersey 1931, as amended and supplemented, and more particularly as amended and supplemented in and by Sections 8 and 9 of Chapter 330, Laws of New Jersey

1933, and Chapter 191, Laws of New Jersey 1935, it is provided as follows:

"8. Article III-A, section three hundred and fifty-one, of the act of which this act is an amendment be and the same is hereby amended to read as follows:

351. Whenever the municipal finance commission shall function in any municipality and so long as it shall continue so to do, no judgment, decree, levy or execution against such municipality or the property thereof for the recovery of the amount due on any bonds, notes or other obligations of the municipality, in the payment of which such municipality has defaulted, shall be enforced until otherwise specially ordered by the Supreme Court or a justice thereof in an appropriate proceeding for such purpose, after notice to the commission, and the enforcement of any such judgment, decree, levy or execution shall be and it hereby is stayed until otherwise specially ordered as aforesaid.

"9. Article III-A, section three hundred and fifty-two, of the act of which this act is an amendment be and the same is hereby amended to read as follows:

352. Whenever the municipal finance commission shall function in any municipality and so long as it shall continue so to do, no action or proceeding of any kind either direct or ancillary, by way of mandamus or otherwise shall be brought against such municipality or any public officers for the assessment, levy or collection of taxes by or for such municipality and any and all actions or proceedings therefor shall be and they hereby are stayed; except that first, the Supreme Court or a justice thereof, after notice to the commission, may authorize one or more creditors of such municipality to bring and maintain an action or proceeding therefor in the Supreme Court, which shall be brought for the benefit of themselves and all other creditors of such municipality and in which all other creditors of such municipality shall have the right to intervene and assert their claim and in which all other creditors of such municipality may, and said commission shall, be made parties in such manner and upon such notice as the Supreme Court shall approve; and except that, second, the municipal finance commission may bring and maintain an action or actions by way of mandamus or by any other appropriate pro-

ceeding or proceedings for the assessment, levy or collection of taxes by such municipality for the payment of principal and/or interest of the indebtedness of the municipality found to be outstanding as provided in section two hundred and one of this act." (Sec. 8 and 9, c. 330, Laws 1933.)

"Article III-A of the act to which this act is an amendment be and the same hereby is amended by adding thereto after section three hundred fifty-three a new section as follows:

[fol. 7] 354. Whenever the municipal finance commission shall function in any municipality and so long as it shall continue to do so, no action or proceedings at law or in equity shall be brought or prosecuted, the purpose of which is to effect the disposition of property or funds owned or controlled by the municipality, except as provided in this act. If any such municipality has in its possession or under its control, or there is in the possession or under the control of the commission, any property or funds of such municipality which are or may be available for the payment of interest or principal upon any of the debts of such municipality (over and above the payment of the current operating expenses of the municipality and the maintenance of a reasonable working capital), then such municipality in its discretion may apply, or if directed by the commission shall apply, to the Supreme Court to determine the application and distribution of such property or funds to and among the creditors of the municipality, and in any such case the Supreme Court in its discretion may permit an application for relief of the same character to be made by any creditor of the municipality. In any such proceedings all creditors of the municipality shall be made parties thereto in such manner and upon such notice by publication or otherwise as the Supreme Court shall approve, and any creditor may appear therein and assert his rights to receive all or any part of such property or funds." (c. 191, Laws 1935.)

10. In and by the terms and provisions of Section 17 of Chapter 258, Laws of New Jersey, 1935, it is provided as follows:

"17. Remedies. Whenever the commission shall function in a municipality having a school district coterminous therewith which is governed by the provisions of Article VII of the school law,

(a) no judgment, decree, levy or execution against such school district or the property thereof for the recovery of the amount due on any bonds, notes or other obligations of the school district, in the payment of which such school district has defaulted, shall be enforced until otherwise specially ordered by the Supreme Court or a justice thereof in an appropriate proceeding for such purpose, after notice to the commission, and the enforcement of any such judgment, decree, levy or execution shall be and it hereby is stayed until otherwise specially ordered as aforesaid:

(b) no action or proceeding of any kind either direct or ancillary, by way of mandamus or otherwise, shall be brought against such school district, municipality, or any public officers for the assessment, levy or collection of taxes for such school district and any and all actions or proceedings therefor shall be and they hereby are stayed; except that first, the Supreme Court or a justice thereof, after notice to the commission may authorize one or more creditors of such school district to bring and maintain an action or proceeding therefor in the Supreme Court, which shall be brought for the benefit of themselves and all other creditors of such school district and in which all other creditors of such school district shall have the right to intervene and assert their claim and in which all other creditors of such school district may, and said commission shall, be made parties in such manner and upon such notice as the Supreme Court shall approve; and except that, second, the commission may bring and maintain an action or actions by way of mandamus or by any other appropriate proceeding or proceedings for the assessment, levy or collection of taxes for such school district for the payment of principal and/or interest of the indebtedness of the school district found to be outstanding as provided in section one of this act,

(c) no action or proceeding at law or in equity shall be brought or prosecuted, the purpose of which is to affect the disposition of property or funds owned or controlled by the school district, except as herein provided; if any such school district has in its possession or under its control, or there is in the possession or under the control of [fol. 8] the commission, any property or funds of such school district which are or may be available for the payment of interest or principal upon any of the debts of such

school district (over and above the payment of the current operating expenses of the school district and the maintenance of a reasonable working capital), then such school district in its discretion may apply, or if directed by the commission shall apply, to the Supreme Court to determine the application and distribution of such property or funds to and among the creditors of the school district, and in any such case the Supreme Court in its discretion may permit an application for relief of the same character to be made by any creditor of the school district; in any such proceedings all creditors of the school district shall be made parties thereto in such manner and upon such notice by publication or otherwise as the Supreme Court shall approve, and any creditor may appear therein and assert his rights to receive all or any part of such property or funds."

11. The School District of Runnemede, New Jersey, is coterminous with the Borough of Runnemede, New Jersey, and the Municipal Finance Commission is functioning in said School District, pursuant to Chapter 195, Laws of New Jersey, 1935.

12. Complainant is the owner and holder of final judgment in the amount of $21,776.21 made and entered December 5, 1935, against said Board of Education of the Borough of Runnemede, New Jersey, entered in the District Court of the United States for the District of New Jersey in Cause No. L-5224, entitled "Sovereign Camp, Woodmen of the World, vs. The Board of Education of the Borough of Runnemede", etc., which judgment is on bonds of The Board of Education of the Borough of Runnemede, New Jersey, dated June 1, 1930, numbered 3 to 8, inclusive, in the amount of $1,000 each, and interest coupons from those bonds and other bonds of the same issue, all as more fully and particularly appears in the files and records of this Court in Cause number L-5224, to which reference is prayed.

13. Complainant has made demand for payment of said judgment, payment has been refused, and a writ of execution was issued on said judgment on December 24, 1935, and was returned, nulla bona, on January 5, 1936. A certified copy thereof has been served upon the Assessors of said Borough and upon the Tax Collector of said Borough.

14. Defendants William G. Hirsch, Conrad Weber and Earl Kircher, as and constituting the Board of Assessors,

and Albert W. Spencer, Tax Collector, have failed, neglected and refused to perform their duties and to comply with Section 35 of the Execution Act, being 2 Compiled Statutes of New Jersey, p. 2255, and Section 237 of the School Law being 4 Compiled Statutes of New Jersey, p. 4804, requiring that upon judgment entered against a Board of Education of a School District, execution issued and returned nulla bona and service of a certified copy of the execution upon the assessor or assessors of the taxing district in which such school district is located and also upon the collector or collectors of such taxing district, such assessor or assessors shall, at the time of the next regular assessment of school taxes, assess upon the inhabitants of said school district and their estates, and upon the taxable property therein, in addition to the regular school taxes, the amount due upon said execution, with interest thereon to the time when the same shall be paid to the officer serving such process and the collector or collectors shall levy and collect the same, and said amount, when collected, shall be a separate fund, and shall be paid over by said collector to the officer who shall have served said process.

15. Such failure, neglect and refusal is based upon the fact that the Municipal Finance Commission is functioning in the School District of the Borough of Runnemede, New Jersey, and that by Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, all as amended and supplemented, it is provided that whenever said Municipal Finance Commission shall function in any municipality having a school district coterminous therewith which is governed by the provisions of Article VII of the School Law, and so long as it shall continue to do so, no judgment, decree, levy or execution against such school district or the property thereof for the recovery of the amount due on any bonds, notes or other obligations of the [fol. 9] school district, in the payment of which such school district has defaulted, shall be enforced until otherwise specially ordered by the Supreme Court or a justice thereof in an appropriate proceeding for such purpose, after notice to the Commission, and the enforcement of any such judgment, decree, levy or execution is stayed until otherwise specially ordered by the Supreme Court or a justice thereof, and that it is further provided that whenever the Municipal Finance Commission shall function in any school district

and so long as it shall continue so to do, no action or proceeding of any kind either direct or ancillary, by way of mandamus or otherwise shall be brought against such school district or any public officers for the assessment, levy or collection of taxes for such school district and any and all actions or proceedings therefor are stayed; except that first, the Supreme Court or a justice thereof, after notice to the Commission, may authorize one or more creditors of such school district to bring and maintain an action or proceeding therefor in the Supreme Court, which shall be brought for the benefit of themselves and all other creditors of such school district and in which all other creditors of such school district shall have the right to intervene and assert their claim.

16. Said Chapter 330, Laws of New Jersey 1933, and said Chapters 195 and 258, Laws of New Jersey 1935, and amendments and supplements thereto, were enacted after the issuance of the bonds now represented by plaintiff's judgment, and the principles thereof staying proceedings for the satisfaction of judgments has been held to be constitutional and valid by a 7-6 decision of the Court of Errors and Appeals of the State of New Jersey in Hourigan vs. Township of North Bergen, 113 N. J. L. 143; 172 Atl. 193, decided April 12, 1934.

17. As to complainant, a holder of bonds issued prior to their enactment, said Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, as amended and supplemented, are, and each of them is null and void and contrary to and in violation of Article I, Section 10 of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of contracts, in that in and by the terms of said Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, respectively, Laws of New Jersey 1935, as amended and supplemented, and the functioning of the Municipal Finance Commission in the School District of the Borough of Runnemede, New Jersey, pursuant thereto, complainant's right to enforce the obligation of the contract contained in its bonds is impaired, diminished and destroyed and plaintiff is left without an adequate remedy.

18. Defendant Municipal Finance Commission, purporting to act pursuant to the power and authority vested in it,

has made up, adopted and certified to the Borough Council of the Borough of Runnemede, New Jersey, a budget for the current fiscal year which contains no provision for the levy and collection of a special tax to pay Complainant's judgment or any part thereof, as evidenced by certified copy of the resolution of said Commission adopted by said Commission on the 28th day of February 1936, copy of which is hereto annexed, marked "Exhibit A", and made a part hereof. Said Municipal Finance Commission has also approved a budget for the Board of Education of the School District of the Borough of Runnemede for the school year 1936-1937, which budget contains no provision for the levy and collection of a special tax to pay Complainant's judgment or any part thereof, as evidenced by a resolution adopted by said Commission at a meeting held January 31, 1936, copy of which resolution is hereto annexed, marked "Exhibit B" and made a part hereof. Complainant states on information and belief that, relying upon the stay provisions of Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, all as amended and supplemented, and the functioning of the Municipal Finance Commission in the Borough and School District of Runnemede, the Borough Council will adopt and put into force and effect the budgets as certified and approved by said Commission, and the Tax Assessors and Tax Collector of said Borough of Runnemede, New Jersey, will not include Complainant's judgment or any part thereof in the assessment, levy and collection of taxes as provided and required by the statutes in such case made and provided, being Section 35 of the Execution Act of New Jersey, being 2 Compiled Statutes of New Jersey, page 2255, and Section 237 of the School Law of New Jersey, being 4 Compiled Statutes of New Jersey, page 4804.

[fol. 10] 19. Defendant Municipal Finance Commission is an administrative board or commission, and, acting under and pursuant to the aforesaid unconstitutional statutes, is issuing orders concerning the policy and management of the fiscal affairs of the Borough of Runnemede and the School District of said Borough, and otherwise functioning in said Borough and School District. Said statutes merely confer on the Municipal Finance Commission certain supervisory powers, and some regulation over the disbursement of funds, but with no affirmative powers to

levy Taxes or otherwise raise revenues for the relief of judgment creditors, notwithstanding that said statutes attempt to prevent any judgment creditor from invoking the aid of the courts by way of mandamus or otherwise in obtaining satisfaction of his judgment. Said Commission has refused to recognize the obligation of the Borough and School District to pay its bondholders and has failed and neglected to exercise diligently the limited powers granted to it in the interests of the holders of bonds of said Borough and School District, but on the contrary has been lax and dilatory in the management of the finances of said Borough and School District, and has actively encouraged and counselled said Borough and School District officials to disregard the demands for payment of any amounts to bondholders and the levying of taxes for the payment of the past due funded indebtedness of said Borough and School District, and this complainant judgment creditor, all in contravention of the statutes in such cases made and provided, being Section 35 of the Execution Act, 2 Compiled Statutes of New Jersey, page 2255, and Section 237 of the School Law, being 4 Compiled Statutes of New Jersey, page 4804.

20. Complainant's judgment, described in paragraph 12 hereof, was ordered on December 2, 1935, and was made and entered on December 5, 1935. Execution thereon was issued December 24, 1935, and returned nulla bona on January 3, 1936, and petition for a writ of mandamus to compel the assessment, levy and collection of taxes for the payment of complainant's judgment was filed February 14, 1936. Proofs have been taken on said petition but the matter has not yet been decided and will not be decided for some time. Meanwhile, and despite the pendency of Complainant's petition for said writ of mandamus, said Municipal Finance Commission has been and is insisting that the Borough Council of the Borough of Runnemede adopt and put into force and effect the budget certified to it by said Commission, and that taxes be levied and collected by the Board of Assessors and Tax Collector of said Borough in accordance with the budget certified to the Borough Council and the budget approved for the Board of Education, and said Borough Council, Board of Education, Tax Assessors and Collector are threatening to adopt and put into force and effect the budgets certified by the

said Commission or budgets of their own making, neither of which will provide for payment of Complainant's judgment or any part thereof.

21. The tax assessors and the tax collector of said Borough of Runnemede, New Jersey, acting at the direction of the Municipal Finance Commission, will not include in the tax levy for the current fiscal year the amount of complainant's juddgment or any part thereof, unless compelled so to do by order of the Court, because of the functioning of the Municipal Finance Commission in said School District of the Borough of Runnemede, New Jersey, pursuant to Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, as amended and supplemented.

22. If prior to a final determination of complainant's application for a writ of mandamus, the Borough Council and the Board of Education of the Borough of Runnemede, New Jersey, adopt and put into force and effect budgets which make no provision for payment of complainant's judgment or any part thereof and the tax assessors and tax collector of said Borough levy and collect taxes in accordance with said budgets and without making provision in said levy for payment of complainant's judgment or any part thereof, as said Borough Council, Board of Education and said tax assessors and tax collector now threaten to do, and complainant is informed and believes will do, all because of Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, all as amended and supplemented, and the functioning of the Municipal Finance Commission in said School District, complainant will suffer irreparable injury and damage. [fol. 11] and any writ of mandamus issued out of the District Court for the District of New Jersey will be inadequate and ineffectual to compel the officials of said Borough to levy and collect taxes for the payment of complainant's judgment or any part thereof during the current fiscal year of said School District, as a result of which complainant will be delayed and subjected to great additional expense and irreparably injured and damaged.

23. Complainant's remedy at law in the premises is neither plain, adequate nor complete and relief can be granted only in a court of equity.

Wherefore, inasmuch as complainant has no plain, adequate and complete remedy at law and to the end that complainant will not suffer irreparable damage and injury and may be permitted to preserve and conserve its valid legal vested property rights, complainant prays:

A. That a subpoena issue out of this Court directed to defendants, commanding them to appear and answer to this complainant, but not under oath, answer under oath being expressly waived.

B. That defendant Municipal Finance Commission be permanently enjoined and restrained from functioning in the School District of the Borough of Runnemede, New Jersey.

C. That pending final hearing said Municipal Finance Commission be restrained and enjoined from functioning in the School District of the Borough of Runnemede, New Jersey, by interlocutory injunction and, in the meanwhile, by temporary restraining order.

D. That this Court hold, adjudge and declare Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, as amended and supplemented, are unconstitutional and void in so far as they attempt to affect the enforceability of complainant's bonds and complainant's judgment by staying proceedings for the enforcement thereof.

E. That, in aid of the mandamus proceedings now pending, defendants Earl Kircher, Conrad Weber and William G. Hirsch, as the Board of Assessors, and Albert W. Spencer, Tax Collector, respectively, of the Borough of Runnemede, New Jersey, be enjoined and restrained from assessing, levying and collecting any taxes in and for said Borough for the fiscal year 1936 without including therein the amount of complainant's judgment or such part thereof as may finally be ordered in the mandamus proceedings now pending in the District Court of the United States for the District of New Jersey.

F. That this Court hold, adjudge and declare that complainant's rights to compel a levy and collection of taxes for the satisfaction of its judgment are governed solely by Section 35 of the Execution Act of New Jersey, being 2 Compiled Statutes of New Jersey, page 2255, and

Section 237 of the School Law of New Jersey, being 4 Compiled Statutes of New Jersey, page 4804.

G. That complainant have such other, further and additional relief in the premises as may be equitable and just.

Count Two

As a Further and Additional Cause of Action by Complainant:

1. Complainant realleges and reaffirms as a part of this count all of the allegations contained in paragraphs 1 to 19, both inclusive, of Count One of this Complaint, to the same effect as though here fully set forth.

2. Complainant is the owner and holder of bonds of the Board of Education of the Borough of Runnemede, New Jersey, dated June 1, 1930, numbered 9 to 78, inclusive, in the amount of $1,000 each, with coupons representing interest due and to become due attached. The principal of said bonds will mature and become due serially, $2,000 annually June 1, 1936 and 1937, $3,000 annually 1938 to 1959, all dates inclusive, and interest on said bonds, represented by coupons, will become due and payable semi-annually on June 1 and December 1 of each year. Said bonds contain no provision for acceleration of prin- [fol. 12] cipal upon default in payment of interest or upon default in payment of other bonds of said issue.

3. As a result of the enactment of Sections 8 and 9 of Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, and amendments and supplements thereto, and the functioning of the Municipal Finance Commission in the School District of the Borough of Runnemede, New Jersey, a cloud of unenforceability has been publicly cast upon complainant's bonds, and the market value of complainant's bonds has been greatly depreciated, diminished and impaired, and it is impossible for complainant to sell or otherwise dispose of said bonds at their true value, and such a condition will continue to exist so long as said Commission continues to function in said School District. As a result, complainant has been, is and as long as said Commission continues to function in said School District will continue to be, irreparably damaged and injured.

4. As long as the Municipal Finance Commission continues to function in the School District of the Borough of Runnemede, New Jersey, and the constitutionality of Sections 8 and 9 of Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, all as amended and supplemented, are undetermined, said School District and the Board of Education thereof will make no payments on its past due bonds and coupons and will continue to default in the payment of principal and interest of said bonds as the same become due and payable and complainant will be forced to bring, repeatedly, separate actions at law and ancillary proceedings in mandamus as each instalment of principal and interest becomes due, which will cause and require a multiplicity of suits and the value of said bonds and coupons will be and become greatly depreciated and impaired and complainant is and will be irreparably damaged and injured.

5. Complainant is without a plain, adequate and complete remedy at law and can be given relief only in a court of equity.

Wherefore, complainant prays:

A. That a subpoena issue out of this Court directed to defendants David T. Wilentz, J. H. Thayer Martin and Walter R. Darby as constituting the Municipal Finance Commission of the State of New Jersey, commanding them to be and appear before this Court at a day certain and make answer to this complaint, but not under oath, answer under oath being expressly waived.

B. That this Court remove the cloud upon the enforceability of complainant's bonds and prevent a multiplicity of suits by permanently enjoining and restraining defendants Wilentz, Martin and Darby, as and constituting the Municipal Finance Commission from functioning in the School District of the Borough of Runnemede, New Jersey.

C. That pending final hearing this Court issue an interlocutory injunction and a temporary restraining order enjoining and restraining defendants Wilentz, Martin and Darby from functioning in the School District of the Borough of Runnemede, New Jersey.

D. That this Court hold, adjudge and declare Sections 8 and 9 of Chapter 330, Laws of New Jersey 1933, and

Chapter 195 and Section 17 of Chapter 258, Laws of New Jersey 1935, all as amended and supplemented, to be unconstitutional and void as to complainant's bonds, as being contrary to Article I, Section 10 of the Constitution of the United States providing that no State shall pass any law impairing the obligation of contracts.

E. That this Court hold, adjudge and declare that complainant's rights to compel a levy and collection of taxes for the satisfaction of its judgment are governed solely by Section 35 of the Execution Act of New Jersey, being 2 Compiled Statutes of New Jersey, page 2255, and Section 237 of the School Laws of New Jersey, being 4 Compiled Statutes of New Jersey, page 4804.

F. That complainant have such other, further and additional relief in the premises as may be equitable and just.

[fol. 13] Count Three

As a Further and Additional Cause of Action by Complainant:

1. Complainant realleges and reaffirms as a part of this count all of the allegations contained in paragraphs 1 to 19, both inclusive, of Count One and in paragraph 2 of Count Two of this complaint to the same effect as though here fully set forth.

2. Complainant's judgment and bonds are payable in lawful money of the United States only.

3. At the time of the issuance of complainant's bonds the laws of the State of New Jersey provided that taxes levied and assessed upon property within said State should be paid in lawful money of the United States only.

4. In and by the provisions of Chapter 330, Laws of New Jersey 1933, Section 6, as amended and supplemented, it is provided that the governing body of a municipality in which the Municipal Finance Commission is functioning is empowered to compromise and adjust the whole or any part of any special assessments or taxes delinquent to the municipality and no claim of the municipality for taxes or assessments, and interest thereon, in excess of Five Hundred Dollars shall be compromised without the assent in writing of the said Commission.

5. The Board of Education of the Borough of Runnemede, New Jersey, has been in default in the payment of principal and interest on its bonds since on or about June 1, 1931.

6. At meetings of the Municipal Finance Commission acting in and for the Borough of Runnemede held January 31, 1936, and on February 14, 1936, said Commission assented in writing to resolutions of the Council of said Borough providing for the compromise of certain taxes and assessments by the acceptance of bonds, all as more fully appears from the minutes of said meetings of the Municipal Finance Commission, copies of which are attached hereto, made a part hereof and marked "Exhibit D."

7. Complainant owns no property in the Borough of Runnemede, New Jersey.

8. The compromise of past due taxes of said Borough is unlawful and illegal and the acceptance of bonds of said Borough in compromise of taxes of the Borough is unlawful and illegal in that as a result of such compromises and acceptances pursuant to the provisions and requirements of said Chapter 330, Laws of New Jersey, 1933, Section 6, as amended and supplemented, the holders of bonds so accepted are given a preference over complainant and other bondholders who own no property in said Borough of Runnemede, New Jersey, and gives a preference to Borough bondholders over Board of Education bondholders, contrary to law, and complainant is irreparably injured and damaged thereby.

9. As a further result of such compromise and acceptances pursuant to the provisions and requirements of said statute, the security of complainant's bonds is impaired and the obligation of the contract in complainant's bonds is impaired, contrary to the provisions of Article I, Section 10 of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of contracts.

Wherefore, complainant prays:

A. That a subpoena issue out of this Court directed to defendants, commanding them to appear and answer to

this complaint, but not under oath, answer under oath being expressly waived.

B. That defendant Municipal Finance Commission be permanently enjoined and restrained by injunction and, in the meanwhile, by interlocutory injunction and temporary restraining order, from assenting to the compromising of delinquent taxes due and owing to the Borough of Runnemede, New Jersey, for an amount less than the full amount due thereon.

C. That defendant Municipal Finance Commission be permanently enjoined and restrained by injunction and, in the meanwhile, by interlocutory injunction and temporary [fol. 14] restraining order, from authorizing or assenting to the acceptance of any medium other than lawful money in payment of taxes now or hereafter to become due and owning to the Borough of Runnemede, New Jersey.

D. That defendant Albert W. Spencer, Tax Collector of the Borough of Runnemede, New Jersey, be permanently enjoined and restrained by injunction and, in the meanwhile, by interlocutory injunction and temporary restraining order, from receiving payment of taxes and giving a receipt of payment in full and showing payment in full on the tax books and records of the Borough of Runnemede, New Jersey, except upon payment of the full amount, principal, interest at the legal rate, and penalties.

E. That defendant Albert W. Spencer, Tax Collector of the Borough of Runnemede, New Jersey, be permanently enjoined and restrained by injunction and, in the meanwhile, by interlocutory injunction and temporary restraining order, from accepting any medium other than lawful money in payment of taxes now or hereafter to become due and owing to the Borough of Runnemede, New Jersey.

F. That this Court hold, adjudge and declare Section 6 of Chapter 330, Laws of New Jersey 1933, as amended and supplemented, to be unconstitutional and void as to complainant's judgment and bonds, as being contrary to Article I, Section 10 of the Constitution of the United States providing that no State shall pass any law impairing the obligation of contracts.

G. That complainant have such other, further and additional relief as may be equitable and just.

Count Four

As a Further and Additional Cause of Action by Complainant:

1. Complainant realleges and reaffirms as a part of this count all of the allegations contained in paragraphs 1 to 19, both inclusive of Count One and in paragraph 2 of Count Two of this complaint, to the same effect as though here fully set forth.

2. An actual controversy exists between complainant and defendant Municipal Finance Commission as to the constitutionality and validity of Sections 8 and 9 of Chapter 330, Laws of New Jersey 1933, and Chapters 191, 195 and Section 17 of Chapter 258, Laws of New Jersey 1935, all as amended and supplemented, in that complainant contends that said statutes are unconstitutional and void as to bonds of the Board of Education of said school district, which bonds were issued prior to the enactment of said statutes, for the reason that said statutes stay the enforcement of bonds and judgments thereon, while the Municipal Finance Commission of New Jersey is functioning in said school district, and are contrary to and in violation of the provisions of Article I, Section 10 of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of contracts, and defendants contend that said statutes are valid and constitutional as to such bonds.

Wherefore, complainant prays:

A. That a subpoena issue out of this Court directed to defendants, commanding them to appear and answer to this complaint, but not under oath, answer under oath being expressly waived.

B. That this Court hold, adjudge and declare that, as to school district bonds issued prior to their enactment, Sections 8 and 9 of Chapter 330, Laws of New Jersey 1933, and Chapters 191, 195 and 258, Laws of New Jersey 1935, all as amended and supplemented, are unconstitutional and void as being contrary to Article I, Section 10 of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts.

C. That this Court enjoin and restrain defendant Municipal Finance Commission in the enforcement and execution of said statutes.

D. That this Court permanently enjoin, and, pending final hearing, this Court issue an interlocutory injunction and a temporary restraining order, enjoining and restraining defendants Wilentz, Martin and Darby from functioning in the School District of the Borough of Runnemede, New Jersey.

[fol. 15] E. That complainant have such other and further relief in the premises as may be equitable and just.

Arthur T. Vanderbilt, 744 Broad Street, Newark, New Jersey; Thomson, Wood & Hoffman, Two Wall Street, New York, N. Y., Solicitors for and of Counsel with Complainant.

In United States District Court for the District of New Jersey

[Title omitted]

Affidavit Verifying Bill of Complaint and in Support of Application for Interlocutory Injunction

State of New York,
County of New York, ss:

John B. Dawson, of full age, being duly sworn according to law, upon his oath deposes and says:

That he is one of the attorneys for the Complainant and that he makes this affidavit on behalf of the Complainant and by the express authority and consent of the Complainant for the reason that he has actual knowledge of all the allegations in said bill by examination of the records of the Municipal Finance Commission of the State of New Jersey, [fol. 16] and by reason of having acted as one of the attorneys for the Complainant in Cause No. L-5224 entitled "Sovereign Camp, Woodmen of the World *v.* Board of Education of the Borough of Runnemede" in which final judgment was rendered in favor of Complainant on December 5, 1935, and by reason of having acted as one of

the attorneys for Complainant in the filing of the petition for a writ of mandamus to compel the assessment, levy and collection of taxes for the payment of Complainant's judgment, which petition was filed February 14, 1936, and by reason of having acted as one of the attorneys for the Plaintiffs in connection with the litigation concerning other defaulted municipalities under the protection of the Commission hereinafter referred to, to-wit, Township of North Bergen, City of Asbury Park, Township of Chester and Borough of Fort Lee, and deponent has, therefore, peculiar knowledge of the facts stated in the complaint, and is the proper party to sign and verify such bill of complaint.

1. The Sovereign Camp of the Woodmen of the World is now and at all times hereinafter mentioned was, a fraternal benefit life insurance association organized and existing under and by virtue of the laws of the State of Nebraska, with its main office and principal place of business in the City of Omaha, Nebraska, and said complainant is a citizen and resident of the State of Nebraska.

2. Defendant David T. Wilentz is Attorney General of the State of New Jersey; defendant J. H. Thayer Martin is State Tax Commissioner of the State of New Jersey; defendant Walter R. Darby is Commissioner of Municipal Accounts of the State of New Jersey, and as such Attorney General, State Tax Commissioner and Commissioner of Municipal Accounts said defendants constitute the Municipal Finance Commission of the State of New Jersey created by Chapter 340 of the Laws of 1931 of the State of New Jersey as amended and supplemented. Defendants Earl Kircher, Conrad Weber and William G. Hirsch are members of and constitute the Board of Assessors of the Borough of Runnemede, New Jersey, and defendant Albert W. Spencer is Tax Collector of the Borough of Runnemede, New Jersey. Each of said defendants is a citizen and resident of the State of New Jersey and of the District of New Jersey.

3. This is a suit of a civil nature in equity and is wholly between citizens of different States. It is, moreover, a suit arising under the Constitution of the United States, as hereinafter more fully appears.

4. The matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of $3,000.00.

5. Prior to, to wit, the 15th day of May, 1934, the Borough of Runnemede, a municipality of the State of New Jersey, had defaulted for over sixty days in the payment of the principal or interest of certain of its outstanding notes or bonds, and in compliance with the provisions of Chapter 340, Laws of New Jersey 1931, as amended and supplemented, a certified copy of a resolution adopted by the governing body of said Borough of Runnemede, New Jersey, reciting in general terms that due to unusual conditions the municipality was not in a position to meet its obligations when due in spite of the endeavors of its officers, and petitioning that the said Municipal Finance Commission function in said municipality, was filed with Honorable Frank Lloyd, a Justice of the Supreme Court of New Jersey.

6. Thereafter, and on, to-wit, the 15th day of May, 1934, after summary investigation, said Justice Frank Lloyd made and entered an order that said Borough of Runnemede, New Jersey, was unable to meet its obligations, which order, together with the petition above described, were filed in the office of the Clerk of the Supreme Court of New Jersey.

7. Thereupon said Municipal Finance Commission commenced to function in the said Borough of Runnemede, New Jersey, and has since been and now is functioning therein.

8. In and by the terms and provisions of Chapter 195, Laws of New Jersey 1935, as amended and supplemented, [fol. 17] it is provided that whenever the Municipal Finance Commission shall function in any municipality and there is a school district coterminous with such municipality governed by the provisions of Article VII of an act entitled "An Act to establish a thorough and efficient system of free public schools," etc., approved October nineteenth, one thousand, nine hundred and three, such school district and the board of education thereof shall be subject to all the provisions of the act to which said Chapter 195 is a supplement, being Chapter 340 of the Laws of New Jersey 1931, as theretofore or thereafter amended and supplemented.

9. The School District of Runnemede, New Jersey, is coterminous with the Borough of Runnemede, New Jersey, and the Municipal Finance Commission is functioning in said School District, pursuant to Chapter 195, Laws of New Jersey, 1935.

10. That on or about June 1, 1930, Complainant purchased in the open market, for value and before maturity, at a price in excess of par and accrued interest, $78,000 par value School Bonds of the Board of Education of the Borough of Runnemede, New Jersey, being all of the issue of bonds of said Board dated June 1, 1930, numbered consecutively from 1 to 78, inclusive, of the denomination of $1,000 each, and bearing interest at the rate of five and one-quarter per cent per annum, payable semi-annually June 1 and December 1 of each year. Said bonds were in coupon form, payable to bearer, and were payable and matured serially in numerical order $2,000 bonds on June 1 in each of the years 1932 to 1937, inclusive, and $3,000 bonds on June 1 in each of the years 1938 to 1959, inclusive, and contain no provision for the acceleration of principal upon default in payment of principal or interest.

11. Bonds numbers 1 and 2 of said issue matured and were paid on June 1, 1932 and complainant is now the owner of a judgment in the sum of $21,776.21 representing the principal of bonds numbers 3 to 8, inclusive, now past due, and interest coupons numbers 4 to 10, inclusive, attached to each of said bonds numbers 3 to 78, inclusive, which coupons became due on June 1, 1932, December 1, 1932, June 1, 1933, December 1, 1933, June 1, 1934, December 1, 1934 and June 1, 1935, together with interest from the respective maturity dates of said bonds and coupons to the date of the judgment which judgment was entered in this Court December 5th, 1935, in cause number L-5224, entitled "Sovereign Camp, Woodmen of the World vs. The Board of Education of the Borough of Runnemede," to which reference is prayed.

12. Complainant has made demand for payment of said judgment, payment has been refused, and a writ of execution was issued on said judgment on December 24, 1935, and was returned, nulla bona, on January 5, 1936. A certified copy thereof has been served upon the Assessors of said Borough and upon the Tax Collector of said Borough.

13. Defendants William G. Hirsch, Conrad Weber and Earl Kircher, as and constituting the Board of Assessors, and Albert W. Spencer, Tax Collector, have failed, neglected and refused to perform their duties and to comply with Section 35 of the Execution Act, being 2 Compiled

Statutes of New Jersey, page 2255, and Section 237 of the School Law, being 4 Compiled Statutes of New Jersey, page 4804, requiring that upon judgment entered against a Board of Education of a School District, execution issued and returned nulla bona and service of a certified copy of the execution upon the assessor or assessors of the taxing district in which such school district is located and also upon the collector or collectors of such taxing district, such assessor or assessors shall, at the time of the next regular assessment of school taxes, assess upon the inhabitants of said school district and their estates, and upon the taxable property therein, in addition to the regular school taxes, the amount due upon said execution, with interest thereon to the time when the same shall be paid to the officer serving such process and the collector or collectors shall levy and collect the same, and said amount, when collected, shall be a separate fund, and shall be paid over by said collector to the officer who shall have served said process.

[fol. 18] 14. Such failure, neglect and refusal is based upon the fact that the Municipal Finance Commission is functioning in the School District of the Borough of Runnemede, New Jersey, and that by Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, all as amended and supplemented, it is provided that whenever said Municipal Finance Commission shall function in any municipality having a school district coterminous therewith which is governed by the provisions of Article VII of the School Law, and so long as it shall continue to do so, no judgment, decree, levy or execution against such school district or the property thereof for the recovery of the amount due on any bonds, notes or other obligations of the school district, in the payment of which such school district has defaulted, shall be enforced until otherwise specially ordered by the Supreme Court or a justice thereof in an appropriate proceeding for such purpose, after notice to the Commission, and the enforcement of any such judgment, decree, levy or execution is stayed until otherwise specially ordered by the Supreme Court or a justice thereof, and that it is further provided that whenever the Municipal Finance Commission shall function in any school district and so long as it shall continue so to do, no action or proceeding of any kind either direct or ancillary, by way of mandamus or otherwise shall be brought against such school

district or any public officers for the assessment, levy or collection of taxes for such school district and any and all actions or proceedings therefor are stayed; except that first, the Supreme Court or a justice thereof, after notice to the Commission, may authorize one or more creditors of such school district to bring and maintain an action or proceeding therefor in the Supreme Court, which shall be brought for the benefit of themselves and all other creditors of such school district and in which all other creditors of such school district shall have the right to intervene and assert their claim.

15. Said Chapter 330, Laws of New Jersey 1933, and said Chapters 195 and 258, Laws of New Jersey 1935, and amendments and supplements thereto, were enacted after the issuance of the bonds now represented by plaintiff's judgment, and the principles thereof staying proceedings for the satisfaction of judgments has been held to be constitutional and valid by a 7-6 decision of the Court of Errors and Appeals of the State of New Jersey in Hourigan vs. Township of North Bergen, 113 N. J. L. 143; 172 Atl. 193, decided April 12, 1934.

16. As to complainant, a holder of bonds issued prior to their enactment, said Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, as amended and supplemented, are, and each of them is null and void and contrary to and in violation of Article I, Section 10 of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of contracts, in that in and by the terms of said Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, respectively, Laws of New Jersey 1935, as amended and supplemented, and the functioning of the Municipal Finance Commission in the School District of the Borough of Runnemede, New Jersey, pursuant thereto, complainant's right to enforce the obligation of the contract contained in its bonds is impaired, diminished and destroyed and plaintiff is left without an adequate remedy.

17. Defendant Municipal Finance Commission, purporting to act pursuant to the power and authority vested in it, has made up, adopted and certified to the Borough Council of the Borough of Runnemede, New Jersey, a budget for the current fiscal year which contains no provision for

the levy and collection of a special tax to pay Complainant's judgment or any part thereof, as evidenced by certified copy of the resolution of said Commission adopted by said Commission on the 28th day of February 1936, copy of which is annexed to the Complaint, marked "Exhibit A," and made a part hereof. Said Municipal Finance Commission has also approved a budget for the Board of Education of the School District of the Borough of Runnemede for the school year 1936-1937, which budget contains no provision for the levy and collection of a special tax to pay Complainant's judgment or any part thereof, as evidenced by a resolution adopted by said Commission at a meeting held January 31, 1936, copy of which resolution is annexed to the Complaint, marked "Exhibit B" and made a part hereof. Complainant states on information and belief that, [fol. 19] relying upon the stay provisions of Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, all as amended and supplemented, and the functioning of the Municipal Finance Commission in the Borough and School District of Runnemede, the Borough Council will adopt and put into force and effect the budgets as certified and approved by said Commission, and the Tax Assessors and Tax Collector of said Borough of Runnemede, New Jersey, will not include Complainant's judgment or any part thereof in the assessment, levy and collection of taxes as provided and required by the statutes in such case made and provided, being Section 35 of the Execution Act of New Jersey, being 2 Compiled Statutes of New Jersey, page 2255, and Section 237 of the School Law of New Jersey, being 4 Compiled Statutes of New Jersey, page 4804.

18. Defendant Municipal Finance Commission is an administrative board or commission, and, acting under and pursuant to the aforesaid unconstitutional statutes, is issuing orders concerning the policy and management of the fiscal affairs of the Borough of Runnemede and the School District of said Borough, and otherwise functioning in said Borough and School District. Said statutes merely confer on the Municipal Finance Commission certain supervisory powers, and some regulation over the disbursement of funds, but with no affirmative powers to levy taxes or otherwise raise revenues for the relief of judgment creditors, notwithstanding that said statutes attempt to prevent any

judgment creditor from invoking the aid of the courts by way of mandamus or otherwise in obtaining satisfaction of his judgment. Said Commission has refused to recognize the obligation of the Borough and School District to pay its bondholders and has failed and neglected to exercise diligently the limited powers granted to it in the interests of the holders of bonds of said Borough and School District, but on the contrary has been lax and dilatory in the management of the finances of said Borough and School District, and has actively encouraged and counselled said Borough and School District officials to disregard the demands for payment of any amounts to bondholders and the levying of taxes for the payment of the past due funded indebtedness of said Borough and School District and this complainant judgment creditor, as evidenced by a letter dated February 18, 1936, from W. A. Stevens, special counsel to the Commission, to Walter S. Keown, county counsel, Camden County, copy of which is hereto attached, marked "Exhibit C" and made a part hereof, all in contravention of the statutes in such cases made and provided, being Section 35 of the Execution Act, 2 Compiled Statutes of New Jersey, page 2255, and Section 237 of the School Law, being 4 Compiled Statutes of New Jersey, page 4804.

19. Complainant's judgment, described in paragraph 11 hereof, was ordered on December 2, 1935, and was made and entered on December 5, 1935. Execution thereon was issued December 24, 1935, and returned nulla bona on January 3, 1936, and petition for a writ of mandamus to compel the assessment levy and collection of taxes for the payment of complainant's judgment was filed February 14, 1936. Proofs have been taken on said petition but the matter has not yet been decided and will not be decided for some time. Meanwhile, and despite the pendency of Complainant's petition for said writ of mandamus, said Municipal Finance Commission has been and is insisting that the Borough Council of the Borough of Runnemede adopt and put into force and effect the budget certified to it by said Commission, and that taxes be levied and collected by the Board of Assessors and Tax Collector of said Borough in accordance with the budget certified to the Borough Council and the budget approved for the Board of Education, and said Borough Council, Board of Education, Tax Assessors and Collector are threatening to adopt and put into force and

effect the budgets certified by the said Commission or budgets of their own making, neither of which will provide for payment of Complainant's judgment or any part thereof.

20. The tax assessors and the tax collector of said Borough of Runnemede, New Jersey, acting at the direction of the Municipal Finance Commission, will not include in the tax levy for the current fiscal year the amount of complainant's judgment or any part thereof, unless compelled so to do by order of the Court, because of the functioning of the Municipal Finance Commission in said School District [fol. 20] of the Borough of Runnemede, New Jersey, pursuant to Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, as amended and supplemented.

21. If prior to a final determination of complainant's application for a writ of mandamus, the Borough Council and the Board of Education of the Borough of Runnemede, New Jersey, adopt and put into force and effect budgets which make no provisions for payment of complainant's judgment or any part thereof and the tax assessors and tax collector of said Borough levy and collect taxes in accordance with said budgets and without making provision in said levy for payment of complainant's judgment or any part thereof, as said Borough Council, Board of Education, and tax assessors and tax collector now threaten to do, and complainant is informed and believes will do, all because of Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, all as amended and supplemented, and the functioning of the Municipal Finance Commission in said School District, complainant will suffer irreparable injury and damage and any writ of mandamus issued out of the District Court for the District of New Jersey will be inadequate and ineffectual to compel the officials of said Borough to levy and collect taxes for the payment of complainant's judgment or any part thereof during the current fiscal year of said School District, as a result of which complainant will be delayed and subjected to great additional expense and irreparably injured and damaged.

22. As a result of the enactment of Sections 8 and 9 of Chapter 330, Laws of New Jersey 1933, and Chapters 195

and 258, Laws of New Jersey 1935, and amendments and supplements thereto, and the functioning of the Municipal Finance Commission in the School District of the Borough of Runnemede, New Jersey, a cloud of unenforceability has been publicly cast upon complainant's bonds, and the market value of complainant's bonds has been greatly depreciated, diminished and impaired, and it is impossible for complainant to sell or otherwise dispose of said bonds at their true value, and such a condition will continue to exist so long as said Commission continues to function in said School District. As a result, complainant has been, is and as long as said Commission continues to function in said School District will continue to be, irreparably damaged and injured.

23. As long as the Municipal Finance Commission continues to function in the School District of the Borough of Runnemede, New Jersey, and the constitutionality of Sections 8 and 9 of Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, all as amended and supplemented, are undetermined, said School District and the Board of Education thereof will make no payments on its past due bonds and coupons and will continue to default in the payment of principal and interest of said bonds as the same become due and payable and complainant will be forced to bring, repeatedly, separate actions at law and ancillary proceedings in mandamus as each instalment of principal and interest becomes due, which will cause and require a multiplicity of suits and the value of said bonds and coupons will be and become greatly depreciated and impaired and complainant is and will be irreparably damaged and injured.

24. At the time of the issuance of complainant's bonds the laws of New Jersey provided that taxes levied and assessed upon property within said State should be paid in lawful money of the United States only, and complainant's judgment and bonds are so payable.

25. In and by the provisions of Chapter 330, Laws of New Jersey 1933, Section 6, as amended and supplemented, it is provided that the governing body of a municipality in which the Municipal Finance Commission is functioning is empowered to compromise and adjust the whole or any part of any special assessments or taxes delinquent to the

municipality and no claim of the municipality for taxes or assessments, and interest thereon, in excess of Five Hundred Dollars shall be compromised without the assent in writing of the said Commission.

26. The Board of Education of the Borough of Runnemede, New Jersey, has been in default in the payment of principal and interest on its bonds since on or about June 1, 1931.

[fol. 21] 27. At meetings of the Municipal Finance Commission acting in and for the Borough of Runnemede held January 31, 1936, and on February 14, 1936, said Commission assented in writing to resolutions of the Council of said Borough providing for the compromise of certain taxes and assessments by the acceptance of bonds, all as more fully appears from the minutes of said meetings of the Municipal Finance Commission, copies of which are attached to the bill of complaint, marked "Exhibit D", and made a part hereof.

28. Complainant owns no property in the Borough of Runnemede, New Jersey.

29. The compromise of past due taxes of said Borough is unlawful and illegal and the acceptance of bonds of said Borough in compromise of taxes of the Borough is unlawful and illegal in that as a result of such compromises and acceptances pursuant to the provisions and requirements of said Chapter 330, Laws of New Jersey 1933, Section 6, as amended and supplemented, the holders of bonds so accepted are given a preference over complainant and other bondholders who own no property in said Borough of Runnemede, New Jersey, and gives a preference to Borough bondholders over Board of Education bondholders, contrary to law, and complainant is irreparably injured and damaged thereby.

30. As a further result of such compromises and acceptances pursuant to the provisions and requirements of said statute, the security of complainant's bonds is impaired and the obligation of the contract in complainant's bonds is impaired, contrary to the provisions of Article I, Section 10 of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of contracts.

31. An actual controversy exists between complainant and defendant Municipal Finance Commission as to the constitutionality and validity of Sections 8 and 9 of Chapter 330, Laws of New Jersey 1933, and Chapters 191, 195 and Section 17 of Chapter 258, Laws of New Jersey 1935, all as amended and supplemented, in that complainant contends that said statutes are unconstitutional and void as to bonds of the Board of Education of said School District, which bonds were issued prior to the enactment of said statutes, for the reason that said statutes stay the enforcement of bonds and judgments thereon while the Municipal Finance Commission of New Jersey is functioning in said school district, and are contrary to and in violation of the provisions of Article I, Section 10 of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of contracts, and defendants contend that said statutes are valid and constitutional as to such bonds.

32. The Municipal Finance Commission was organized on or about June 11, 1931. Defendant Darby, Ex-officio Chairman, also holds the following State offices: State Auditor, Commissioner of Municipal Accounts, State Relief Council, and Chairman, State Funding Commission. Deponent is informed that Attorney General Wilentz never attends the meetings of the Commission but has designated an assistant, Theodore Backes, to act in his stead, and that State Tax Commissioner Martin attends personally only a few of the meetings of the Commission, being generally represented by an assistant, one Woolston. The Commission appoints an auditor for each of the municipalities in which it is functioning, sometimes designating a single auditor for more than one municipality, and these auditors appoint clerks who do the actual supervising of the municipality under the direction of the Auditor.

33. The Commission is functioning in twelve political subdivisions in this manner, but the actual functioning of the Commissioners is limited to merely fixing policies, and acting upon the recommendations of its auditors. Weekly meetings are held by the Commission, but the affairs of only a portion of the municipalities under its protection are discussed at any one meeting.

34. The purpose of the Municipal Finance Commission as testified to by Chairman Darby in "Edwin H. Barker et al.

[fol. 22] v. Township of North Bergen, et al.," as appears from the files and record in said cause in this Court, to which reference is prayed, bearing Cause No. E 5025, see page 72.

"A. I would say that the purpose or the function of the Municipal Finance Commission is to act in an advisory and supervisory capacity to municipalities which come under its jurisdiction."

35. Since the twelve municipalities have been under the control of the Commission no holders of bonds of any of the municipalities under its protection have received any payment on account of either defaulted principal or interest, notwithstanding the existence of funds available for that purpose, except by the purchase of bonds with trust monies, the acceptance of bonds in the payment of taxes, payment in connection with a refunding plan, or by just plain preferential payment, all as testified to by Chairman Darby in said cause above referred to, on page 75 et seq., as follows:

"Q. Now, have there been any payments to bondholders in any of the municipalities that have come under the jurisdiction of the Municipal Finance Commission?

A. Either principal or interest, or both?

Q. Well, start with principal.

A. My general answer to that would be No, on the theory that the Municipal Finance Commission is—one of its functions is to prevent that sort of thing. In other words, if a bondholder cannot be paid in full, then nobody gets paid.

Q. Anything?

A. There have been some exceptions. One of which is this school funding bond issue in North Bergen.

Q. Well, barring some very unusual case such as this resolution which was just read into the record by the Township Clerk, there have been no payments of principal to any bond holder or note holder in any of the twelve municipalities in which the Commission is functioning?

A. Generally speaking, that is true.

Q. And you so testified before the Securities & Exchange Commission?

A. Yes, sir.

Q. Now, have there been payments of interest to the bond or note holders in these twelve municipalities since the Commission——

A. The only one which I recollect is this school—the interest on the school funding issue of North Bergen.

Q. That is this particular resolution that was read?

A. I wasn't here when Mr. Beisch testified.

Q. Well, it is the resolution——

The Court: Let him read it. Take a recess for a minute and read it.

Q. That is the only exception that you know of?

A. There is another exception as in the Borough of Manville which was refunded and the interest that was paid was paid ratably and equitably to all.

The Court: At the time the interest was paid to the holders of these school bonds were there other bonds of the municipality in default?

The Witness: I think so, yes.

The Court: Upon what theory then was the payment approved by your Commission?

The Witness: On the theory of economy because the arrangement was that the bonds bore 6% interest and the holders of these bonds agreed to accept one coupon during the year for the full year's interest, in other words, accept 3%.

The Court: How could you say you were not giving a preference without first having marshalled all the assets?

The Witness: I cannot answer that.

Q. Well now, in the case of Manville was there any interest paid there before the refunding was completed?

A. Not to my recollection. Adjustment of interest was made upon the refunding.

[fol. 23] Q. Yes. Now, barring the exception of Manville, where interest was paid on the refunding plan being put through, and barring the payment of principal and interest on the school bonds of North Bergen, which are referred to in the resolution of the Township of December 5, and in the resolution of your Commission of December 7, has any interest been paid to any creditors of any of these twelve municipalities since the Commission began to function in them?

A. An arrangement was entered into with all the creditors of the Borough of Lavallette in which they agreed to accept ratably the amount of money which was available for the

payment, and also agreed to reduce the interest for 1935 to 4%.

Q. And have they been paid interest under that arrangement?

A. Not as yet.

Q. Well, I am dealing now with those who have been paid interest as distinguished from those where arrangements were made to pay interest in the future?

A. My recollection is that there aren't any others.

Q. Every one of these municipalities had funds on hand in their sinking fund and assessment fund and reserve fund, that might have been paid out to bondholders and note holder?

A. To a greater or less extent, yes."

36. That notwithstanding the adoption by the Commission on October 11, 1935 of a resolution determining to discontinue the practice of accepting bonds in payment of taxes, and the purchasing of bonds with sinking fund and trust fund monies, copy of which is hereto attached and marked "Exhibit D", the Commission did thereafter approve and permit the acceptance of bonds in settlement of taxes in the Borough of Runnemede in accordance with the proceedings of said Commission, copies of which are attached to the Bill of Complaint, marked "Exhibit C".

37. The Municipal Finance Commission is of the opinion that no bondholder should receive any money from a municipality under the protection of the Commission except in connection with a refunding plan approved by the Commission, and has aided and abetted such municipalities in accumulating monies, in some cases in substantial amounts, to induce bondholders to accept refunding bonds, all as sworn to by Chairman Darby in said Cause No. E 5025, see pages 121, 141 and 156, of the transcript of testimony in said cause, as follows:

(121)

"Q. Well, Mr. Darby, in this case does the Commission believe that the bonds [funds] should be impounded indefinitely until a refunding plan can be agreed upon?

Mr. Vanderbilt: May I have my objection noted, without burdening the record with the reasons?

The Court: Yes.

A. No, not indefinitely; but the funds, these funds, should be used in connection with a refinancing plan.

Q. Well, assuming that a refunding plan was despaired of, would the Municipal Finance Commission be prepared to direct the distribution of the bond funds?

A. I would say not.

Q. Well, why not, Mr. Darby?

A. Because there are questions involving the status of the creditors with respect to these funds, not only the bondholders but other creditors.

Q. How does the Commission think that those questions ought to be determined?

A. They should be determined by some court of competent jurisdiction.

Q. I understand that you would favor that only as a last resort.

A. Yes."

(141)

Q. That is, you believe that there must be some cash funds to be distributed to accomplish a refunding plan?

A. Yes; otherwise the creditors are not willing to accept a refunding plan, unless there is some cash involved in it.

Q. So that you believe that a distribution of these bond funds now would postpone a refunding of the municipality?

A. I certainly do.

[fol. 24] By the Court:

Q. Well, in no instance could these funds be turned over to anyone other than the individuals entitled to them.

A. No, your Honor.

Q. Then what difference would it make whether you pay them out now or in the future?

A. Well, I feel this, that it is both to the interest of the creditors and the municipality to bring the municipality out of a default under a plan by which that municipality may reasonably be expected to maintain its payments in the future."

(156)

"By the Court:

Q. Well, I gather from your testimony that the only reason why funds that have accumulated in these different

accounts are not disbursed to those entitled to them is that you feel that by holding them for a while the municipality will be in a better position to cause its creditors to agree upon a plan of refinancing.

A. Yes, sir.

Q. Is that correct?

A. That is correct.

Q. That would mean, would it not, in the last analysis, that what is being done is the withholding of these funds as a sort of a club over the heads of creditors until such time as they may be forced to come in by virtue of this holding out.

A. Some people look on it in that light, your Honor, but added to that, added to that so far as I am concerned, is this, that these funds come from several different sources."

38. Since the Municipal Finance Commission has been functioning in the twelve municipalities in New Jersey, no bondholder has been able to obtain any relief in the State or Federal Courts against any one of said municipalities with the single exception of a writ of mandamus issued by the Honorable Philip Forman, District Judge, United States District Court of the District of New Jersey, in Cause No. L-4581 which writ was vacated on appeal to the Circuit Court of Appeals of the Third Circuit. Actions have been filed by bondholders against the Township of North Bergen, under the protection of the Commission since 1931, and disposed of as follows:

L-4864—Action for judgment on defaulted bonds and coupons filed, summons issued	Dec. 10, 1934
Answer and equitable counterclaim filed	Jan. 10, 1935
Motion to strike answer and equitable counterclaimed filed	Feb. 1, 1935
Hearing on motion	Feb. 7, 1935
Amended complaint filed by stipulation	July 12, 1935
Order striking answer and entering summary judgment filed	Mar. 12, 1936
Execution issued	Mar. 26, 1936
Execution returned nulla bona	Apr. 23, 1936

E-5025—Bill of complainant in equity filed as a class suit asking injunction against purchasing bonds with trust monies, enjoining acceptance of bonds in payment of taxes, accounting of bond monies on hand and determination of bonds such monies are applicable to the payment of, and direction to pay such monies pro rata to the bonds entitled thereto filed	Dec. 18, 1934
Hearing on temporary injunction continued to February 4, 1935	Dec. 26, 1934
Hearing adjourned to Feb. 21, 1935 on	Feb. 7, 1935
Hearing continued on Feb. 21, 1935 and adjourned no fixed date	
Answer to Township filed	Mar. 6, 1935
Answer of Municipal Finance Commission filed	Mar. 29, 1935
Petition to intervene as plaintiff filed by several bondholders	May 2, 1935
Answer of Seaboard Trust Co. filed	May 24, 1935
Final hearing began Dec. 16, 1935, continued to Dec. 23, 1935	
Final hearing resumed and adjourned without day, briefs to be submitted	Dec. 23, 1935

[fol. 25] The net result of this extended litigation in connection with North Bergen's default is nil so far as monetary return to the bondholders is concerned, attention being called to the fact that the Court required from February 7, 1935 to March 12, 1936 to render a judgment on defaulted bonds and coupons, notwithstanding a decision of the Circuit Court (Central-Penn Bank v. Delaware Township hereinafter referred to) holding a similar answer and counterclaim as no defense to such an action, which decision was rendered August 1, 1935.

The hearings have not even been completed in the equity case, although the bill of complaint was filed December 18,

1934. The funds involved in the equity case aggregate in excess of $2,000,000.

Actions have been filed in this Court by bondholders against Asbury Park, under the protection of the Commission since March 7, 1935, and disposed of as follows:

L-4851—Complaint at law for judgment on defaulted bonds filed	Nov. 28, 1934
Judgment filed	Feb. 21, 1935
Execution issued	Mar. 4, 1935
Petition for writ of mandamus filed	Mar. 6, 1935
Hearings on petition	Mar. 8, 13, 15, 1935
Peremptory writ issued	Mar. 15, 1935
Assignment of Errors filed	Apr. 12, 1935
Appeal taken	
Stay of execution denied by Circuit Court	May 29, 1935
City officials cited for contempt	June 7, 1935
City officials adjudged in contempt	June 14, 1935
Execution of contempt order stayed by Circuit Court	July 3, 1935
Writ of mandamus vacated	July 22, 1935
Certiorari denied by Supreme Court	Oct. 21, 1935
New application for a writ of mandamus filed	Jan. 21, 1936
Hearings on application Feb. 7, 20, 21, 26, Mar. 16, 17, 18, 19, Apr. 2, 20, 21, 22 and May 15 and 16, 1936, decision reserved.	

To date there has been no decision of the Court on this second application.

E-5019—Bill of complaint in equity filed against Asbury Park to restrain the acceptance of bonds in payment of taxes on	Dec. 14, 1934
Order to show cause issued	Dec. 14, 1934
Final decree entered August 1935 but expired Jan. 1, 1936, no renewal.	

An action was filed by a bondholder for a judgment against the Township of Delaware under the protection

of the Commission since June 20, 1933, (Central-Penn Natl. Bank of Phila.) on defaulted bonds and coupons, and the history of that litigation is as follows:

Complaint filed, summons issued	Nov. 6, 1933
Answer and equitable counterclaim filed	Dec. 14, 1933
Motion to strike filed	Jan. 19, 1934
Hearing on motion to strike	Feb. 9, 1934
Memorandum filed by Court	Apr. 5, 1934
Order for judgment filed	Apr. 13, 1934
Assignment of Errors filed	July 5, 1934
Opinion of Circuit Court affirming	Aug. 1, 1935

Deponent is unaware of any effort on behalf of the bondholder in the above case to attempt to collect on the judgment rendered therein.

An action on defaulted bonds and coupons was filed in this Court by the Norfolk and Western Railway vs. the Township of Chester, under the protection of the Commission since Mar. 14, 1933, No. L-5013, and the proceedings thereon to date are as follows:

L-5013—Complaint filed, summons issued	Mar. 22, 1935
Answer and equitable counterclaim filed	Apr. 19, 1935
Motion to strike Answer and Counterclaim filed	May 13, 1935
Questions submitted on briefs	June 26, 1935
Memorandum by Court striking answer filed	Sept. 10, 1935
Judgment entered	Nov. 15, 1935
Execution issued	Dec. 24, 1935
Execution returned nulla bona	Jan. 3, 1935
Petition for peremptory writ of mandamus for tax levy to pay judgment filed, order to show cause issued	Feb. 14, 1936
Final hearing on order to show cause	Mar. 12, 1936

[fol. 26] The above case is now pending awaiting a decision of the District Court on the petition for the writ of mandamus.

Another action at law was filed in this Court by a group of bondholders for a judgment on defaulted bonds of the

Borough of Fort Lee, under the protection of the Commission since July 5, 1933, entitled Barker et al. v. Borough of Fort Lee, No. L-5202.

Complaint filed, summons issued	July 6, 1935
Affidavit of merits filed	July 17, 1935
Answer and equitable counterclaim filed	Aug. 1, 1935
Motion to strike answer and counterclaim filed	Sept. 4, 1935
Hearing on motion to dismiss	Sept. 9, 1935
Order striking answer and counterclaim and for judgment entered	Apr. 8, 1936

There has been no further attempt on the part of the judgment creditor to collect on this judgment.

The same group of bondholders filed a bill in equity to enjoin the Borough of Fort Lee from purchasing bonds with trust monies and accepting bonds in payment of taxes with the following result:

E-5239—Bill of complaint filed, order to show cause issued, returnable Sept. 9, 1935	July 22, 1935
Dismissed without prejudice	Nov. 18, 1935

The above case was dismissed by agreement, and by reason of the adoption of the resolution of the Municipal Finance Commission on October 11, 1935, hereto attached, "Exhibit E," which purported to change the policy of the Commission with respect to the purchase of bonds with trust funds and the acceptance of bonds in payment of taxes.

39. In all of the litigation outlined in paragraph 38, the Municipal Finance Commission has intervened and taken an active part, attempting to defeat the rendition of judgments on bonds of municipalities under the protection of the Commission, although there was no valid claim of illegality concerning the execution, issuance, sale and delivery of any of said bonds advanced in any of such litigation, the sole defense in all of said cases being that interposed by said Commission based upon the provisions of Article III-A of Chapter 340, P. L. 1931, as amended and supplemented.

40. In the litigation in connection with the defaults of the Township of North Bergen, the Municipal Finance Commission and the Township officials have met every court move of the bondholders with the presentation of refund-

ing plans, the first of such plans, dated December 26, 1934, having been ostensibly prepared by the Director of Finance of the Township, but, to the best of deponent's information and belief, with the assistance of one C. E. Rightor, then an employee of the Municipal Finance Commission, the second being a plan dated April 5, 1935 submitted by the Seaboard Trust Company of Hoboken, with the tacit approval of the Commission as evidenced by a resolution adopted by said Commission on the 21st day of June, 1935, copy of which is hereto attached, marked "Exhibit F," and made a part hereof, and the third, a plan which purports to have been prepared by a so-called Conciliation Committee of creditors appointed by the Commission, although said plan was actually drafted, according to deponent's information and belief, by one Russell, one of the counsel to the Commission, which plan is dated January 2, 1936, approved by the Commission by resolution of January 17, 1936, copy of which is hereto attached, marked "Exhibit G," and made a part hereof.

In the same manner this complainant was met at the hearing April 3, 1935, on complainant's petition for a writ of mandamus against the Borough of Runnemede, with a plan for refunding the indebtedness of the Borough and School District, dated March 1, 1936, drafted by the Commission.

Likewise, the complainant Norfolk & Western Railway in its action against Chester Township for a writ of mandamus was presented at the hearing on said petition March 12, 1936, with a refunding plan, dated February 3, 1936, prepared by the Commission.

In the Asbury Park litigation, the judgment creditors were met with a plan of refunding at the beginning of the [fol. 27] hearing on the petition for a writ of mandamus on February 7, 1936, which plan purports to have been prepared by the City officials, and which plan has not been either approved or disapproved by the Commission so far as the minutes of the Municipal Finance Commission on Asbury Park show. There is also in existence a plan of refunding for Asbury Park prepared by a different group of creditors, called the Rippel Committee, which has never been approved or disapproved by the Commission so far as the said minutes show.

In each instance, with the exception of the Asbury Park litigation, the refunding plans are urged upon the Court by counsel to the Commission as an additional reason for withholding the legal relief being sought by the bondholders, notwithstanding the fact that in no instance were the creditors asking for the relief consulted with respect to the preparation of the various plans, or had they consented thereto.

41. The continued interference of the Municipal Finance Commission in the fiscal affairs of the municipalities under the protection of said Commission, and the interference of said Commission in the litigation between said municipalities and the holders of bonds of such municipalities has resulted in a complete breakdown of the legal machinery provided by the Judicial Code enacted pursuant to the Constitution of the United States for the enforcement of contract obligations of New Jersey municipalities in the Courts of the United States, as evidenced by the fact that no municipal creditor has been able to collect any money on defaulted municipal obligations from any municipality under the protection of the Commission through the process of said Courts.

42. The inability of bondholders and judgment creditors of defaulted New Jersey municipalities to obtain relief in the Federal courts has been aggravated by a willingness on the part of the State courts of the State of New Jersey to assist such defaulting municipalities in forestalling the efforts of such creditors to enforce their obligations against such municipalities, as evidenced by the order of Supreme Court Justice Joseph B. Perskie, entered in connection with proceedings which placed the City of Asbury Park under the protection of the Commission, in which it appears that the primary purpose of placing that municipality under the protection of the Commission was to defeat an application for a writ of mandamus in the Federal Court made by judgment creditors to enforce the payment of a judgment against the City of Asbury Park on defaulted bonds and coupons of said City, copy of which order is hereto attached, marked "Exhibit H."

43. As a result of the inability of complainant and other bondholders to enforce the collection of any part of the

sums due on defaulted municipal bonds through the process of this Court, a cloud of unenforceability has been publicly cast upon the bonds of the Board of Education of the School District of Runnemede owned by complainant, as well as upon all bonds of New Jersey municipalities, and the market value of such bonds has been greatly depreciated, diminished and impaired, and great uncertainty exists in the minds of the holders of said bonds, and prospective purchasers thereof, as to the rights of bondholders with respect to the enforcement of the payment of the sums due on such bonds by the process of this Court, thus creating a legal question of great importance to the holders of millions of dollars worth of bonds of New Jersey municipalities.

John B. Dawson, Affiant.

Subscribed and sworn to before me this 8th day of June, 1936. Ruth I. White, Notary Public, Westchester County, Certificates filed in New York Co. Clerk's No. 6. Register's No. 8-W17. Commission Expires March 30, 1938.

[fol. 28] EXHIBIT "A" TO AFFIDAVIT

Minutes of the Municipal Finance Commission Meeting of February 28, 1936, Borough of Runnemede, Camden County

1. A regular meeting of the Municipal Finance Commission acting in and for the Borough of Runnemede was held in the office of the State Auditor on Friday, February 28th, with Commissioners Darby, Backes and Woolston present. Mr. Gary was also present.

10A. Whereas, the Municipal Finance Commission under date of February 7th, 1936 approved a budget for the Borough of Runnemede for the year 1936, and

10B. Whereas, this Commission has approved the reduction of certain items of appropriation as more particularly referred to in these minutes.

10C. Now, therefore, be it resolved, that the Municipal Finance Commission hereby approves the budget which fol-

lows herewith and is made part of this resolution, and be it further resolved, that this budget be spread in full in these minutes and certified to the Borough in accordance with Section 209 (A) of Chapter 340, P. L. 1931 as amended, and

10D. Be it further resolved, that the Secretary transmit a certified copy of these minutes to the Secretary of the Camden County Tax Board with a notice that the budget attached hereto and made part hereof shall be deemed the official budget of the Borough, all of which action shall be taken in accord with the section and act hereinabove referred to:

Borough of Runnemede

1936 Budget

Surplus revenue appropriated	None.
Miscellaneous revenues	
Licenses and permits	$1,400.00
Interest on delinquent taxes	4,000.00
Interest on assessments	1,500.00
Franchise tax	5,000.00
Gross receipts tax	700.00
Tax searches	100.00
Refund on water mains	1,239.36
Fines and Costs	200.00
5% Bus gross receipts tax	150.00
Dog licenses	362.55
	14,651.91
Amount to be raised by taxation	32,853.26
	$47,505.17

[fol. 29] Appropriations

Administrative and executive	$1,350.00
Assessment and Collection of taxes	2,775.00
Department of Finance	90.00
Police	3,520.00
Fire	1,350.00
Fire hydrant service	2,410.00
Health and charities	1,355.00
Public roads	3,075.00
Street lighting	4,000.00
Garbage collection	100.00
Elections	200.00

Appropriations—continued

Insurance	$1,150.00
Telephones	280.00
Contingent	100.00
Dog license expenses	88.00
N. J. League of municipalities	35.00
Expense of tax sale and foreclosures	900.00
Municipal Finance Commission	1,500.00
Audit	750.00
W. P. A. projects	750.00
Debt service	15,212.50
Deferred charges	6,398.67
Building Inspector	100.00
Water rent—theatre	16.00
	$47,505.17

11. Attention is directed to the fact that the budget approved by this Commission under date of February 7, 1936 permitted the reduction in certain deferred charges amounting to $12,273.14. These by direct action of the Commission were permitted to be included in the budget in the amount of $6,398.67 with the stipulation that the reduction in such deferred charges should not be effective unless the budget as approved by the Commission be adopted in full by the governing body, which stipulation still holds with respect to the adoption of the revised and amended budget hereinabove referred to.

11A. The Commission by motion duly made, seconded and carried affirmed the above stipulation.

12. On motion the meeting adjourned to Friday, March 20th at 10 o'clock A. M. at the office of the State Auditor, Room 125, State House, Trenton, N. J.

G. C. Skillman, Secretary.

EXHIBIT "B" TO AFFIDAVIT

Minutes of the Municipal Finance Commission Meeting of January 31, 1936, Borough of Runnemede, Camden County

1. A regular meeting of the Municipal Finance Commission acting in and for the Borough of Runnemede was held

in the office of the State Auditor on Friday, January 31st with Commissioners Darby and Woolston present. Mr. Gary was also present.

6. The School Budget of the Borough of Runnemede for the school year 1936-37 was taken up in detail. The Secretary reported that Mr. Bowman had contacted the Board of Education and reached a formal agreement with respect to said budget. The following resolution was, therefore, proposed by Commissioner Woolston, seconded by Commissioner Darby and adopted by a unanimous vote:

6A. Whereas it is the opinion of this Commission that the school budget as submitted by the Board of Education can be approved subject to certain changes and modifications.

[fol. 30] 6B. Now, Therefore, be it Resolved that the school budget of the Borough of Runnemede for the year 1936-37 be approved as follows: Current expenses $52,443.00 (a reduction of $1,000.00 from the figures transmitted by the Board of Education), Repairs and Replacements $920.00; Debt service not less than $15,455.00 or a total budget of $68,818.00.

6C. And be it Further Resolved that estimated receipts from State funds and appropriation balances totalling $23,120.66 be availed of (this being an increase of $1,000.00 over the figures submitted by the Board of Education), leaving the net amount to be raised for local school taxes $45,697.34.

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EXHIBIT "C" TO AFFIDAVIT

Feb. 18, 1936.

Re Sovereign Camp, Woodmen of the World, vs. Board of Education of the Borough of Runnemede, in the County of Camden

Hon. Walter S. Keown, Counsel, Camden County, West Jersey Trust Co. Bldg., Camden, New Jersey.

MY DEAR MR. KEOWN:

The Municipal Finance Commission of the State of New Jersey, Hon. Walter R. Darby, Chairman, has directed your letter of the 8th inst., written to Mr. George C. Skill-

The Board of Education of the Borough of Runnemede, pursuant to the provisions of Chapter 258 of the Laws of 1935 and proceedings taken by the Borough of Runnemede pursuant to the provisions of P. L. 1931, Chapter 340, as amended by P. L. 1933, Chapter 330, is operating under the protection of the acts referred to.

Suit was brought in the case above entitled and judgment obtained by the plaintiff against the School District and execution issued solely for the purpose, as I understand Mr. Vanderbilt, Counsel for plaintiff, of having the execution returned nulla bona and a foundation laid for application to the United States District Court for a writ of mandamus.

For your information, I beg to advise that the execution in question has since been returned nulla bona by the United States Marshal. On Friday last, February 14th, Mr. Vanderbilt applied to Judge Avis for the writ of mandamus and a rule to show cause was issued directed to the respondent, Board of Education, and its members and officers, ordering them to cause to be levied the amount of the judgment obtained with interest and costs, or show cause on March 12th next why the writ should not be issued.

Of course, under the provisions of the Municipal Finance Commission Act, we will defend and oppose the granting of a writ on the ground that in the admitted insolvency of the municipality and School Board no writ of mandamus should issue to prefer any one creditor as against all creditors, in accordance with the Municipal Finance Commission law. This problem has had to be met in similar proceedings taken by clients advised by Mr. Vanderbilt.

At the time of the issuance of the execution, I immediately got in touch with Mr. Henry M. Evans, Attorney for the School Board, and requested him in turn to get in touch with the County Tax Board and urge that because of the Municipal Finance Commission Act, the Board should decline to order the judgment raised in the manner requested by Mr. Vanderbilt.

I respectfully direct your attention to these statutes and in behalf of the Commission ask your cooperation in advising the County Tax Board, to the end that the Commission law may be adhered to and respected. It is our view that the provisions of the Tax Act, P. L. 1918, p. 864, insofar as they are inconsistent with the Municipal Finance Commission Act, are ineffective and inoperative in munici-

palities operating under the protection of the Municipal Finance Act.

Very truly yours, W. A. Stevens, Special Counsel.

WAS/B.

The above letter is certified to be a true and correct copy of a copy of a letter filed with me under date of February 19, 1936.

(Signed) G. C. Skillman, G. C. Skillman, Secretary.
(Seal.)

[fol. 31] EXHIBIT "D" TO AFFIDAVIT

Minutes of the Municipal Finance Commission Meeting of January 31, 1936, Borough of Runnemede, Camden County

1. A regular meeting of the Municipal Finance Commission acting in and for the Borough of Runnemede was held in the office of the State Auditor on Friday, January 31st with Commissioners Darby and Woolston present. Mr. Gary was also present.

* * * * * * *

7. Certified copy of resolution adopted by the Borough Council under date of December 28, 1935 was filed with this Commission and directed to be spread in full in these minutes:

Whereas, certain taxpayers of the Borough of Runnemede, as hereinafter designated, tender bonds Nos. 40, 41 and 42 of the Borough of Runnemede, being Temporary Improvement Bonds, dated November 1st, 1926, due November 1st, 1932, interest rate 5½ per centum, in the denomination of One Thousand Dollars ($1,000.00) each, with interest thereon, as payment upon account of the municipal liens, taxes and assessments levied and assessed respectively on the following:

Prudential Insurance Co., Owner, Block 58, Lot 2A.
Thomas A. Dilley, Owner, Block 63, Lot 14.
Wallie H. Becker, Inc., Owner, Block 107, Lot 1C.

Francis Halsted, Owner, Block 60, Lot 10.
Marie C. Halsted, Owner, Block 60, Lot 13A.
Winfield Vandexter, Owner, Block 38, Lots 5-6-7.
Victory Building and Loan Association, Owner, Block 38, Lot 3.
Lewis Toof, Owner, Block 136, Lot 14.
Prudential Insurance Co., Owner, Block 48, Lot 2.
Harry W. Bealer, Inc Owner, Block 35, Lot 11A.

for the purpose of taking credit therefor in the sum of One Thousand Dollars each, being the principal of the said bonds, and further tender the payment of the balance of said taxes and municipal liens, together with all taxes and municipal liens subsequent to January 1st, 1934, and up to and including the taxes assessed for the year 1934, in full, with interest upon all delinquent taxes and assessments, in cash.

Now, Therefore, be it Resolved by the Mayor and Borough Council of the Borough of Runnemede, in the County of Camden, New Jersey, that the Tax Collector of the Borough of Runnemede be and he is hereby authorized and directed to accept from the said owners said bonds Nos. 40, 41 and 42 of the Temporary Improvement Bonds of the Borough of Runnemede, dated November 1st, 1926, due November 1st, 1932, interest rate 5½ per centum, in the denomination of One Thousand Dollars each; with interest due thereon, on account of the principal of taxes and municipal liens and assessments upon premises assessed in the names of the owners hereinabove recited and as hereinabove set forth, which fell due prior to January 1st, 1934, and to give credit therefor, for said bonds and interest, in the amount of the principal of said bonds only, to wit, One Thousand Dollars ($1,000.00) each, provided that the balance of the said municipal liens and taxes, together with taxes and municipal liens subsequent to January 1st, 1934, and the interest upon all delinquent taxes and municipal liens, be paid in full in cash; and, provided further, that said payment shall be made within fifteen days after the written assent of the Municipal Finance Commission to the adoption of this resolution shall have been received; and

Be it Further Resolved that the said Tax Collector, upon receipt of said bonds, shall deliver the same to the Borough Treasurer.

[fol. 32] Statement of Taxes and Assessments Due on Properties Situate in the Borough of Runnemede, Camden County, New Jersey

Prudential Insurance Co., Owner, Block 58, Lot 2A

Balance Sidewalk		$237.33
1933 Taxes		95.20
1934 "		92.14
1935 "		97.92
Interest		36.39
Total		$558.98

Thomas A. Dilley, Owner, Block 63, Lot 14

Balance Sidewalk		$305.61
1933 Taxes		92.30
1934 "		110.76
¾ of 1935 Taxes	(Bal. Paid)	86.01
Interest		98.72
Total		$693.40

Wallie H. Becker, Inc., Owner, Block 107, Lot 16

1932 Taxes	$124.08
1933 "	128.40
1934 "	124.30
½ of 1935 Taxes	62.14
Interest	26.88
Total	$465.80

Marie C. Halsted, Owner, Block 60, Lot 13A

Balance Sidewalk	$127.37
Interest	24.66
Total	$152.03

Francis Halsted, Owner, Block 60, Lot 10

Balance Sidewalk	$57.19
Interest	5.20
Total	$62.39

Winfield Vandexter, Owner, Block 38, Lots 5-6-7

Balance Sidewalk	$466.99
1928 Taxes	36.80
1929 "	34.98
1930 "	34.18
Interest and cost of Sale	116.51
1931 Taxes	38.25
1932 "	51.48
1933 "	57.96
1934 "	56.09
Interest	161.00
Total	$1,054.24

Victory Building and Loan Association, Owner, Block 98, Lot 3

Balance Sidewalk	$62.40
1933 Taxes	104.60
1934 "	101.27
1935 "	106.56
Interest	22.54
Total	$397.37

Lewis Toof, Owner, Block 136, Lot 14

Balance Sidewalk	$74.54
Interest	1.48
Total	$76.02

Prudential Insurance Co., Owner, Block 48, Lot 2

Balance Sidewalk	$60.04
1933 Taxes	73.50
1934 "	139.57
1935 "	148.32
Interest	31.17
Total	$452.60

[fol. 33] Harry W. Bealer, Inc., Owner, Block 35, Lot 11A

1930 Taxes	$113.58
Interest and Cost of Sale 11/5/31	12.50
1931 Taxes	127.15
1932 "	187.20
1933 "	191.24

1934 Taxes	$185.09
1935 "	195.84
Interest	97.35
Total	$1,109.95

Summary—Total Amounts Due

Prudential Insurance Co., Owner, Block 58, Lot 2A	$558.98
Thomas A. Dilley, Owner, Block 63, Lot 14	693.40
Wallie H. Becker, Inc., Owner, Block 107, Lot 16	465.80
Francis Halsted, Owner, Block 60, Lot 10	62.39
Marie C. Halsted, Owner, Block 60, Lot 13A	152.03
Winfield Vandexter, Owner, Block 38, Lots 5-6-7	1,054.24
Victory Building & Loan Association, Owner, Block 98, Lot 3	397.37
Lewis Toof, Owner, Block 136, Lot 14	76.02
Prudential Insurance Co., Owner, Block 48, Lot 2	452.60
Harry W. Bealer, Inc., Owner, Block 35, Lot 11A	1,109.95
Total	$5,022.78

Amounts Due Prior to January 1, 1934

Prudential Insurance Co., Block 58, Lot 2A	$332.53
Thomas A. Dilley, Block 63, Lot 14	397.91
Wallie H. Becker, Inc., Block 107, Lot 16	252.48
Francis Halsted, Block 60, Lot 10	57.19
Marie C. Halsted, Block 60, Lot 13A	127.37
Winfield Vandexter, Block 38, 5-6-7	837.15
Victory Building & Loan Association, Block 98, Lot 3	167.00
Lewis Toof, Block 136, Lot 14	74.54
Prudential Insurance Co., Block 48, Lot 2	133.54
Harry W. Bealer, Inc., Block 35, Lot 11A	631.67
	$3,011.38

Total amount as per summary above	$5,022.78
Payment of the Borough of Runnemede Temporary Improvement Bonds, #40-41-42 dated November 1st, 1926, due November 1st, 1932, rate 5½% denomination of $1,000.00 each	3,000.00
Balance to be paid in cash on or before December 28th, 1935	$2,022.78

7A. After a careful study of the items involved in the preceding schedules the following resolution was proposed:

7B. Resolved that the Municipal Finance Commission give its formal consent in writing to the resolution set forth above, each item being separately considered and individually acted upon by the Commission.

7C. Be it Further Resolved that such assent and approval is granted with the proviso that the payments received in satisfaction of the several individual items be made within fifteen days from the adoption of this resolution, with a further proviso that any cash payments received from taxes of 1933 and prior years be held in a reserve fund and said moneys after being deposited to be separately accounted for in said reserve fund and that any cash payments on account of the principal of any assessments included in said compromise be deposited in the trust accounts to be held therein.

[fol. 34] 7D. Be it Further Resolved that this approval is conditional upon the Borough Council making payments to the reserve funds within forty-eight hours after the receipt of any of the moneys referred to in the above schedule and upon further condition that the payments referred to represent all of the municipal liens or other charges now due against the properties hereinabove named.

7E. Be it Further Resolved that the assent hereinabove given is conditional upon all 1935 taxes being settled in full together with any accrued penalties thereon and further conditioned upon the first quarter of the 1936 taxes being paid in cash.

7F. On motion of Commissioner Woolston, seconded by Commissioner Darby, the foregoing resolution was adopted by a unanimous vote.

Minutes of the Municipal Finance Commission Meeting of February 14, 1936, Borough of Runnemede, Camden County

1. A regular meeting of the Municipal Finance Commission acting in and for the Borough of Runnemede was held in the office of the State Auditor on Friday, February 14th, with Commissioners Darby and Woolston present. Mr. Gary was also present.

* * * * * * *

4. Certified copy of resolution adopted by the Mayor and Council of the Borough of Runnemede whereby certain taxes were settled by the use of bonds was duly considered and Auditor Holcombe's report thereon reviewed. It was the opinion of the Commission that this resolution was formally considered as a transaction pending as of October 11th, 1935, it being reported by the Borough Treasurer that all settlements involved had been consummated on or before January 31, 1936.

Whereas, certain taxpayers of the Borough of Runnemede, as hereinafter designated, tender Bonds Nos. 43 and 44 of the Borough of Runnemede, being Temporary Improvement Bonds, dated November 1st, 1926, due November 1st, 1932, interest rate 5½ per centum, in the denomination of One Thousand Dollars ($1,000.00) each, with interest thereon, as payment upon account of the municipal liens, taxes and assessments levied and assessed respectively on the following:

Irene E. Willets, Owner, Block 61, Lot 18.
Hedding Building and Loan Association, Owner, Block 51, Lot 8.
Hedding Building and Loan Association, Owner, Block 94, Lot 21.
Blackwood Building and Loan Association, Owner, Block 49, Lot 10.
Frank Haarlander, Owner, Block 139, Lot 6.
Frank Haarlander, Owner, Block 139, Lot 7.
Charles D. Bowers, Owner, Block 46, Lot 9.
First Mortgage Service Co., Owner, Block 42, Lot 16.
First Mortgage Service Co., Owner, Block 60, Lot 19.

for the purpose of taking credit therefor in the sum of One Thousand Dollars each, being the principal of the said bonds; and further tender the payment of the balance of said taxes and municipal liens, together with all taxes and municipal liens subsequent to January 1st, 1934, and up to and including the taxes assessed for the year 1934, in full, with interest upon all delinquent taxes and assessments, in cash:

Now, Therefore, be it Resolved by the Mayor and Borough Council of the Borough of Runnemede, in the County of Camden, New Jersey, that the Tax Collector of the Borough of Runnemede be and he is hereby authorized and directed to accept from the said owners said bonds Nos. 43

and 44 of the Temporary Improvement Bonds of the Borough of Runnemede, dated November 1st, 1926, due November 1st, 1932 interest rate 5½ per centum, in the denomination of One Thousand Dollars each, with interest due thereon, on account of the principal of taxes and municipal liens and assessments upon premises assessed in the names [fol. 35] of the owners hereinabove recited and as hereinabove set forth, which fell due prior to January 1st, 1934, and to give credit therefor, for said bonds and interest, in the amount of the principal of said bonds only, to wit, one Thousand Dollars ($1,000.00) each, provided that the balance of the said municipal liens and taxes, together with taxes and municipal liens subsequent to January 1st, 1934, and the interest upon all delinquent taxes and municipal liens, be paid in full in cash; and, provided further, that said payment shall be made within fifteen days after the written assent of the Municipal Finance Commission to the adoption of this resolution shall have been received; and

Be it Further Resolved that the said Tax Collector, upon receipt of said bonds, shall deliver the same to the Borough Treasurer.

Dated February 5, 1936.

Statement of Taxes and Assessments Due on Properties Situate in the Borough of Runnemede, Camden County, New Jersey

Irene E. Willets, Owner, Block 61, Lot 18

Balance Sidewalk	$47.80
1933 Taxes	88.20
1934 "	85.36
1935 "	90.72
Interest	39.57
Total	$351.65

Hedding Building and Loan Association, Owner Block 51. Lot 8

1932 Taxes	$20.49
1933 "	115.24
1934 "	111.57
1935 "	116.64
Interest	30.00
Total	$393.94

Hedding Building and Loan Association, Owner, Block 94, Lot 21

Interest to date of sale	$8.86
Balance Sidewalk	104.00
1932 Taxes	153.10
1933 "	164.80
1934 "	158.54
1935 "	168.48
Interest	101.06
Total	$858.84

Blackwood Building and Loan Association, Owner, Block 49, Lot 10

Balance Sidewalk	$253.73
1930 Taxes	48.54
Interest and cost of sale	19.97
1931 Taxes	108.55
1932 "	99.28
1933 "	103.20
1934 "	99.91
1935 "	102.24
Interest	120.68
Total	$956.10

Frank Haarlander, Owner, Block 139, Lot 6

1932 Taxes	$60.18
1933 "	81.92
1934 "	79.32
1935 "	80.64
Interest	40.61
Total	$342.67

[fol. 36] Frank Haarlander, Owner, Block 139, Lot 7

1931 Taxes	$10.76
1932 "	8.19
1933 "	9.24
1934 "	8.94
1935 "	10.08
Interest	8.41
Total	$55.62

Charles D. Bowers, Owner, Block 46, Lot 9

Interest and Cost of sale	$38.09
Balance Sidewalk	117.93
1932 Taxes	7.02
1933 "	8.12
1934 "	7.86
1935 "	8.64
Interest	18.52
Total	$206.18

First Mortgage Service Co., Owner, Block 42, Lot 16

Balance Sidewalk	$43.68
1933 Taxes	120.40
Interest	19.71
Total	$183.79

(1934-1935 Taxes Paid.)

First Mortgage Service Co., Owner, Block 60, Lot 19

Balance Sidewalk	$54.62
1933 Taxes	93.80
Interest	20.75
Total	$169.17

(1934-1935 Taxes Paid.)

Summary

	Total Amount Due	Due Prior to January 1, 1934
Irene E. Willets, Block 61, Lot 18	$351.65	$136.00
Hedding Building & Loan Association, Block 51, Lot 8	393.94	135.73
Hedding Building & Loan Association, Block 94, Lot 21	858.84	430.76
Blackwood Building & Loan Association, Block 49, Lot 10	956.10	633.27
Frank Haarlander, Block 139, Lot 6	342.67	142.10
Frank Haarlander, Block 139, Lot 7	55.62	28.19
Charles D. Bowers, Block 46, Lot 9	206.18	171.16

First Mortgage Service Co., Block 42, Lot 16	$183.79	$164.08
First Mortgage Service Co., Block 60, Lot 19	169.17	148.42
Total	$3,517.96	$1,989.71

Total amount as per summary above	$3,517.96
Payment of the Borough of Runnemede Temporary Improvement Bonds Nos. 43 and 44, dated November 1st, 1926, due November 1st, 1932, rate 5½% denomination of $1,000.00 each	2,000.00
Balance to be paid in cash on or before January 31st, 1936	$1,517.96

4A. After a careful study of the items involved in the preceding schedules the following resolution was proposed:

4B. Resolved that the Municipal Finance Commission give its formal consent in writing to the resolution set forth above, each item being separately considered and individualy acted upon by the Commission.

4C. Be it Further Resolved that such assent and approval is granted with the proviso that the payments received in satisfaction of the several individual items be made within fifteen days from the adoption of this resolu-
[fol. 37] tion; with a further proviso that any cash payments received from taxes of 1933 and prior years be held in a reserve fund and said moneys after being deposited to be separately accounted for in said reserve fund and that any cash payments on account of the principal of any assessments included in said compromise be deposited in the trust accounts to be held therein.

4D. Be it Further Resolved that this approval is conditional upon the Borough Council making payments to the reserve funds within forty-eight hours after the receipt of any of the moneys referred to in the above schedule and upon further condition that the payments referred to represent all of the municipal liens or other charges now due against the properties hereinabove named.

4E. Be it Further Resolved that the assent hereinabove given is conditional upon the first quarter of the 1936 taxes being paid in cash.

4F. On motion of Commissioner Woolston, seconded by Commissioner Darby, the foregoing resolution was adopted by a unanimous vote.

EXHIBIT "E" TO AFFIDAVIT

Extract from Minutes of a Special Administrative Meeting of the Municipal Finance Commission Held on October 11, 1935

Resolution

Whereas, the Municipal Finance Commission, after due deliberation and consideration of the many phases of the problem, has concluded that the acceptance by municipalities, under the control of the Commission, of bonds or notes of such municipalities in settlement, either in part or in whole, of tax or assessment indebtedness of taxpayers, and the purchase of the bonds or notes of such municipalities with Sinking Fund or Reserve Fund moneys or other moneys dedicated by law to the outstanding indebtedness of said municipalities subjects the municipalities to the challenge that it creates a preference and dissatisfaction as between its creditors leading to expensive litigation:

Be it, therefore, resolved by the Municipal Finance Commission that no further transactions, involving the acceptance by municipalities, under the control of the Commission, of bonds or notes of such municipalities in settlement, either in part or in whole, of tax or assessment indebtedness of taxpayers and/or the purchase of the bonds or notes of such municipalities with sinking fund or reserve fund moneys or other moneys dedicated by law to the outstanding indebtedness of said municipalities will be hereafter approved and assented to by this Commission; except with the approval of note and bondholders of the municipality.

Be it further resolved that nothing herein contained shall apply to pending proceedings not yet consummated.

Be it further resolved that the Secretary of this Commission be directed to forthwith forward a certified copy

hereof to the municipal clerks of the municipalities of the State in which the Municipal Finance Commission is functioning pursuant to the provisions of Chapter 340 of the Laws of 1931, as amended and supplemented.

The foregoing resolution was proposed by Commissioner Backes, second by Commissioner Woolston and adopted by a unanimous vote.

[fol. 38] IN UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

SUBPOENA AND RETURN—Filed July 8, 1936

To David T. Wilentz, Attorney General of the State of New Jersey; J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, and Walter R. Darby, Commissioner of Municipal Accounts of the State of New Jersey, as and Constituting the Municipal Finance Commission of the State of New Jersey; Earl Kircher, Conrad Weber and William G. Hirsch, Members of the Board of Assessors of the Borough of Runnemede, New Jersey, and Albert W. Spencer, Tax Collector of the Borough of Runnemede, New Jersey, Greeting:

We Command You, that you appear in manner and form required by law in our District Court of the United States for the District of New Jersey, as a Court of Chancery, within twenty days from date of service hereof upon you, to answer to a bill of complaint exhibited against you in our said Court by Sovereign Camp, Woodmen of the World, and to do further and receive what our said Court shall have considered in that behalf; and this you are not to omit, under the penalty that may fall thereon.

Witness the Honorable William Clark, Judge of said Court, this 30th day of June, 1936.

George T. Cranmer, Clerk, by Charles S. Chevrier, Deputy. (L. S.)

Memorandum

The defendant is to file his Answer or other Pleading in the suit, in the Clerk's Office, Trenton, N. J., on or before the twentieth day after service, excluding the day thereof, otherwise the bill may be taken pro confesso.

[fol. 39] Served the within Subpoena and Respond, Bill of Complaint and order to show cause upon Walter R. Darby, delivering to and leaving with him personally a copy thereof at Trenton in the District of New Jersey on the 1st day of July, 1936, and upon David T. Wilentz, by delivering to and leaving with him personally a copy thereof at New Brunswick in the district of New Jersey on the 1st day of July 1936, and upon J. A. Thayer Martin by delivering to and leaving with him a copy thereof at Newark, in the District of New Jersey, and on the 1st day of July 1936, and upon Earl Kircher, by *by* delivering to and leaving with him a copy thereof at Runnemede, in the District of New Jersey, and on the 20th day of July 1936, and upon Conrad Weber by delivering to and leaving with him a copy thereof at Runnemede, in the District of New Jersey and on the 20th day of July 1936, and upon William G. Hirsch, by delivering to and leaving with him a copy thereof at Runnemede, in the District of New Jersey on the 20th day of July 1936, and upon Albert W. Spencer, by delivering to and leaving with him personally a copy thereof at Runnemede, in the District of New Jersey on the 20th day of July 1936, Served the within Bill of Complaint and Order to Show Cause, upon Hon. Harold G. Hoffman, by delivering to and leaving with him personally a copy thereof at Trenton, in the District of New Jersey on the 1st day of July 1936, at the same time showing said persons this original with the seal of the Court attached and informing said persons of its contents.

William P. McDermitt, United States Marshal, by Cecil H. Brown, Deputy.

[File endorsement omitted.]

[fol. 40] In United States District Court

[Title omitted]

Order to Show Cause—Filed June 29, 1938

This matter being opened to the Court by Arthur T. Vanderbilt and John B. Dawson, Solicitors and of Counsel for complainant, and the Court having read the verified Bill of Complaint in the above entitled cause;

It is on this 29th day of June, 1936, Ordered that defendants show cause before this Honorable Court, at the United States District Courtrooms, Post Office Building, in the City of Trenton, New Jersey, on Thursday the 9th day of July, 1936, at the hour of 10:30 o'clock in the forenoon, (D. S. T.) or as soon thereafter as counsel can be heard, why said defendants, and each of them, should not be restrained and enjoined according to the prayer of this bill;

It is further Ordered that copies of the bill of complaint and this order which may be certified by solicitor of complainant shall be served on the defendants and Governor and Attorney General of the State of New Jersey at least five days prior to the date set for the hearing.

John Boyd Avis, United States District Judge.

[fol. 41] In United States District Court

[Title omitted]

Order of Continuance—Filed July 17, 1936

This matter coming on to be heard on the return day of an order to show cause issued herein and dated June 29, 1936, before a statutory court, in the presence of Arthur T. Vanderbilt, Esq., by Frederick W. Hall, Esq., solicitor of complainant and David M. Wood, Esq., of counsel with complainant, and of William A. Stevens, Esq., and B. L. Visscher, Esq., of counsel for defendants David T. Wilentz, J. H. Thayer Martin and Walter *D.* Darby, constituting the Municipal Finance Commission of the State of New Jersey and of Joseph Varbalow, Esq., by Harry Grossman Esq., of counsel for defendants Earl Kircher, Conrad Weber, William G. Hirsch and Albert W. Spencer, and an application having been made for a continuance by counsel for defendants, and the Court having heard and considered the arguments of counsel thereon and being of the opinion that said continuance should be granted on terms, and counsel for defendants having agreed to said terms hereinafter recited,

It is on this 17th day of July, 1936, Ordered that the return day of said order to show cause be and the same is hereby continued to a day to be fixed on condition that

defendants do not accept or approve the acceptance, until [fol. 42] the further order of this Court, of bonds of the Borough or School District of Runnemede in payment of current or delinquent taxes of said Borough and on further condition that counsel prepare and make ready this cause for final hearing, both as to pleadings and evidence, in order that said cause may be heard on final hearing as well as on application for interlocutory injunction by this Court on the date of the continued return day of the said order to show cause to be fixed and on further condition that said cause be so prepared and made ready for final hearing on or before September 15, 1936 and that application for the fixing of the said continued return day be made to this Court by counsel on or before September 15, 1936.

For the statutory court:

Philip Forman, United States District Judge.

On motion of William A. Stevens and Joseph Varbalow, of counsel for defendants.

We hereby consent to the form of this order.

Arthur T. Vanderbilt, Solicitor of Complainant. Wm. A. Stevens, of Counsel for Defendants David T. Wilentz, J. H. Thayer Martin, and Walter R. Darby, Constituting the Municipal Finance Commission of the State of New Jersey. Joseph Varbalow, of Counsel for Defendants Earl Kircher, Conrad Weber, William G. Hirsch and Albert W. Spencer.

Conformed by A. S. Davis, J. 9/9/36.

[fol. 43] IN UNITED STATES DISTRICT COURT

[Title omitted]

JOINT AND SEVERAL ANSWER OF THE DEFENDANTS, EARL KIRCHER, CONRAD WEBER AND WILLIAM G. HIRSCH, CONSTITUTING THE BOARD OF ASSESSORS OF THE BOROUGH OF RUNNEMEDE, NEW JERSEY, AND ALBERT W. SPENCER, AS TAX COLLECTOR OF THE BOROUGH OF RUNNEMEDE, NEW JERSEY—Filed August 1, 1938

The joint and several answer of the defendants Earl Kircher, Conrad Weber and William G. Hirsch, constitut-

ing the Board of Assessors of the Borough of Runnemede, New Jersey, and Albert W. Spencer, as Tax Collector of the Borough of Runnemede, New Jersey.

These defendants, citizens and residents of the State of New Jersey, answering the bill of complaint herein, say that:

Answer to First Count

1. Paragraph 1 is admitted.

2. These defendants admit the allegations in paragraph 2, but deny that this Court has jurisdiction and power to grant the relief prayed for as against these defendants.

3. Paragraphs 3, 4, 5, 6, 7 and 8 of the complaint are admitted.

4. Paragraph 9 is admitted, except that they say that the Statutes of New Jersey therein mentioned were amended by an act of the Legislature of the State of New Jersey [fol. 44] approved April 3, 1936, (N. J. P. L. 1936, pp. 134, 136), by adding thereto the following provision, inter alia:

"3. Article III-A of the act of which this act is an amendment is hereby amended by adding thereto a new section to be numbered and to read as follows:

'355. Upon the application of any creditor made upon notice to the municipality and the commission, the Supreme Court may vacate, modify or restrict any statutory stay contained in this article.' "

5. Paragraph 10 is admitted except that they say that the Statutes of New Jersey therein mentioned were amended by an act of the Legislature of the State of New Jersey, approved June 26, 1936 (N. J. P. L. 1936, p. —) and being Chapter 251, section d, by adding thereto the following provision, inter alia:

"(d) Upon the application of any creditor made upon notice to the School District and the Commission, the Supreme Court may vacate, modify or restrict any statutory stay contained in this Article".

6. Paragraphs 11 and 12 are admitted.

7. These defendants answering paragraph 13 of the complaint admit so much thereof as alleges demand for payment, refusal thereof, and the issuance of a writ of execution and return thereof, and deny the other allegations thereof.

8. Paragraph 14 is denied.

9. Paragraph 15 is denied. They further say that said Statutes of New Jersey, amended as set forth in paragraphs 4 and 5 of this answer, make adequate provision for the vacation, modification or restriction of the stay provided in the Statutes mentioned in paragraph 15 of the complaint. These defendants further say that said Statutes of New Jersey aforesaid, do not impair the obligations arising out of the contract created by the bonds underlying the judgment set forth in paragraph 12 of the complaint.

[fol. 45] 10. These defendants further answering paragraph 15 of the complaint say that the rights of the plaintiff as a judgment holder as set forth in paragraph 12 of the complaint, arose after the enactment of the laws referred to in paragraph 15 of the complaint, and are subject to the operation and provisions thereof.

11. These defendants further answering paragraph 15 of the complaint say that the Statutes therein referred to, provide to the plaintiff a remedy substantially equivalent and alike to that which the plaintiff had prior to the enactment thereof, and that said Statutes merely regulate the procedural steps for obtaining the same relief which the plaintiff had a right to prior to their enactment.

12. These defendants further answering paragraph 15 of the complaint say that the Statutes therein referred to, as amended and supplemented, were passed by the Legislature of the State of New Jersey in an exercise of the sovereign right of the State of New Jersey to protect the lives, health, morals, comfort and general welfare of its people, and that any and all rights of the plaintiff whether arising under the bonds underlying the judgment set forth in paragraph 12; or by virtue of the judgment set forth in paragraph 12, are subject to the exercise of such police power by the State of New Jersey.

13. Paragraph 16 is admitted, except that these defendants leave to this Court the interpretation of the decision

in the case of Hourigan vs. Township of North Bergen, therein referred to.

14. Paragraph 17 is denied, and these defendants repeat as part of the answer to paragraph 17, as though the same were herein fully and at length set forth, the answers heretofore set forth in paragraphs 9, 10, 11 and 12.

15. Paragraph 18 is admitted, except that they say that the Borough Council, the governing body of the Borough of [fol. 46] Runnemede, has no legal right or authority, and is under no obligation to impose or put in force any provision for the levy and collection of a special tax to pay plaintiff's judgment; that the Board of Education of the Borough of Runnemede is a separate and distinct corporate entity, imposing, levying and raising its own taxes for school purposes; that the tax budget for its scholl purposes was, prior to the bringing of this suit, and within the statutory period prescribed by the laws of the State, to wit, on February 9 last, duly adopted; that the tax rate of the Borough of local municipal purposes, school, county and state purposes was struck and fixed by the County Board of Taxation on April 24, 1936, as prescribed by the laws of the State, and the current tax bills mailed out and collections made in conformity therewith which, if plaintiff's prayer were permitted to prevail, would result in utter confusion and financial chaos in the municipality.

16. Paragraph 19 is denied.

17. Paragraph 20 is denied, except that these defendants admit such allegations as set forth the obtaining by plaintiff of a judgment, the return of execution thereon nulla bona, and the filing of a petition for a writ of mandamus. They deny that the mandamus action therein referred to will not be decided for some time, asserting that it will be decided in due course of judicial process, and that no stay or injunction was sought by the Municipal Finance Commission in connection with the mandamus proceedings referred to by said plaintiff in said paragraph 20 of said Count. They further say that the budgets of both the Borough and School District for the current year respectively of each were duly adopted as set forth in paragraph 15 of this answer, the tax rate for the Municipality and School District, and the County and State Taxes were fixed and determined, tax bills were sent out and in many instances paid in full, based upon

such tax rate, months prior to the relief sought by this bill of complaint.

[fol. 47] 18. Paragraphs 21, 22 and 23 are denied.

19. These defendants further answering the complaint say that the writ of execution referred to in paragraphs 12 and 13 of the complaint were not served at the time, in the manner and upon the persons required by law, and that by reason thereof the plaintiff is not entitled to the relief prayed for herein.

20. These defendants further say that the Borough of Runnemede is collecting on account of its annual tax budgets for local, state, county and school purposes, approximately forty per cent of its tax budget, and that any order of this court requiring the Borough of Runnemede to raise during the year 1936 the amount due the plaintiff on its judgment, would necessitate an increase in the tax rate of the Borough of Runnemede of not less than $1.00 upon each $100.00 of valuation, and that from the experience of the Borough of Runnemede in tax collections, these defendants say that the Borough of Runnemede would be unable to collect such additional tax and as a result thereof the collections on the amount of taxes levied for other purposes of the Borough would decrease, causing great disorder and confusion in the municipal functions of the Borough of Runnemede, New Jersey.

21. These defendants further answering the complaint herein say that the compliance by the plaintiff with the provisions of Section 35 of the Execution Act and Section 237 of the School Law referred to in paragraph 18 of the complaint, are conditions precedent to the right of the plaintiff herein to secure relief allowed by such sections, and that the plaintiff has failed to comply with the provisions of said sections, and by virtue thereof is not entitled to benefits thereof, and by reason thereof are not entitled to receive in this Court the relief prayed for.

[fol. 48] These defendants further answering, by way of defense in point of law arising upon the face of the bill of complaint, say that:

22. The bill of complaint does not allege a cause for equitable relief against these defendants or any or either of them.

23. Plaintiff is in laches by reason of its failure to reasonably assert the rights claimed in the bill of complaint.

24. Plaintiff has a complete and adequate remedy at law.

25. No injunction, in accordance with the prayers of the bill of complaint, is authorized by Section 266 of the Federal Judicial Code (Section 380, Title 28, U. S. Code) under which this Court of three judges was assembled and constituted, because this suit is not brought to suspend or restrain the enforcement, operation or execution of any Statute of the State of New Jersey by restraining the action of any officer of such State in the enforcement or execution of such Statute, or in the enforcement or execution of an order made by an administrative board or commission acting in and pursuant to the Statutes of said State.

26. This Court, assembled pursuant to the provisions of Section 266 of the Federal Judicial Code (Section 380, Title 28, U. S. Code), has no power to enjoin defendants, Earl Kircher, Conrad Weber and William G. Hirsch, as the Board of Assessors, and Albert W. Spencer, Tax Collector, respectively, of the Borough of Runnemede, N. J. from assessment, levying and collecting any taxes in and for the said Borough of Runnemede for the fiscal year 1936, ordered levied pursuant to the Statutes of the State and local ordinances, without including plaintiff's judgment or such part [fol. 49] thereof as may finally be ordered in the mandamus proceedings now pending in the District Court of the United States for the District of New Jersey, because said defendants are not State officers within the meaning of Section 266 of the Federal Judicial Code (Section 380, Title 28, U. S. Code).

27. This Court has no jurisdiction of the bill of complaint because the suit is in fact brought against the State of New Jersey by a citizen of another State in violation of the eleventh amendment of the Constitution of the United States.

28. Any injunction, if granted according to the prayers of the bill of complaint, would exceed the powers of this Court by interfering with the internal and local government and affairs of the State of New Jersey and one of its municipal subdivisions in violation of the tenth amendment of the Constitution of the United States.

29. The right to levy taxes in the Borough of Runnemede, New Jersey, is a sovereign power of the State of New Jersey, delegated by it to the Borough of Runnemede aforesaid, and has not been granted or delegated to the Government of the United States of America or any of the agencies or departments thereof, and this Court is without jurisdiction directly or indirectly, through the means of its processes or otherwise, to compel or control the exercise of the taxing powers by the Borough of Runnemede or any of the agencies thereof. This Court is, therefore, without jurisdiction to grant the relief prayed for in the complaint.

30. The rights of the plaintiff under the bonds, which were the basis of the judgment set forth in paragraph 12 of the complaint, merged in said judgment and by virtue of the entry of said judgment a new contract arose between the plaintiff and the Board of Education of the Borough of Runnemede as of December 5th, 1935, which was past the [fol. 50] date of the enactment of the laws referred to in paragraphs 15 and 16 of the complaint, and by reason thereof any and all rights which the plaintiff may have in the premises are subject to the operation and effect of said laws.

Answer to Second Count

31. These defendants repeat as part hereof as though the same were herein fully and at length set forth, all of the answers made by these defendants to paragraphs 1 to 19 both inclusive, of Count One of the complaint and paragraphs 19 to 21 both inclusive, of the answer to the first count.

32. These defendants have not sufficient knowledge or information as to the matter set forth in paragraph 2, whereon to found a belief.

33. Paragraphs 3, 4 and 5 are denied.

These defendants further answering Count Two of the complaint, by way of defense in point of law arising upon the face of the bill of complaint, say that:

34. Count Two of the complaint is multifarious in that, the rights of the plaintiff therein are predicated upon two different causes of action; one, as a holder of a judgment; and second, as a holder of unmatured bonds.

35. Count Two is prematurely instituted as to all bonds therein referred to, held by the plaintiff, upon which no judgment has been entered or which have not as yet matured.

36. Count Two is prematurely instituted as to the cause of action based upon the judgment set forth in paragraph 12 of the First Count in that, plaintiff has failed to comply with the provisions of Section 35 of the Execution Act of New Jersey, and Section 237 of the School Law of New Jersey, referred to in paragraph 18 of the complaint, which compliance is a condition precedent to the right of the plain-
[fol. 51] tiff to any relief.

37. The bill of complaint does not allege a cause for equitable relief against these defendants or any or either of them.

38. Plaintiff is in laches by reason of its failure to seasonably assert the rights claimed in the bill of complaint.

39. Plaintiff has a complete and adequate remedy at law.

40. No injunction, in accordance with the prayers of the bill of complaint, is authorized by Section 266 of the Federal Judicial Code (Section 380, Title 28, U. S. Code) under which this Court of three judges was assembled and constituted, because this suit is not brought to suspend or restrain the enforcement, operation or execution of any Statute of the State of New Jersey by restraining the action of any officer of such State in the enforcement o execution of such Statute, or in the enforcement or execution of an order made by an administrative board or commission acting in and pursuant to the Statutes of said State.

41. This Court, assembled pursuant to the provisions of Section 266 of the Federal Judicial Code (Section 380, Title 28, U. S. Code), has no power to enjoin defendants, Earl Kircher, Conrad Weber and William G. Hirsch, as the Board of Assessors, and Albert W. Spencer, Tax Collector, respectively, of the Borough of Runnemede, N. J., from assessing, levying and collecting any taxes in and for the said Borough of Runnemede for the fiscal year 1936, ordered levied pursuant to the Statutes of the State and local ordinances, without including plaintiff's judgment or such part thereof as may finally be ordered in the mandamus proceedings now pending in the District Court of the United
[fol. 52] States for the District of New Jersey, because said

defendants are not State officers within the meaning of Section 266 of the Federal Judicial Code (Section 380, Title 28, U. S. Code).

42. This Court has no jurisdiction of the bill of complaint because the suit is in fact brought against the State of New Jersey by a citizen of another State in violation of the eleventh amendment of the Constitution of the United States.

43. Any injunction, if granted according to the prayers of the bill of complaint, would exceed the powers of this Court by interfering with the internal and local government and affairs of the State of New Jersey and one of its municipal subdivisions in violation of the tenth amendment of the Constitution of the United States.

44. The right to levy taxes in the Borough of Runnemede, New Jersey, is a sovereign power of the State of New Jersey, delegated by it to the Borough of Runnemede aforesaid, and has not been granted or delegated to the Government of the United States of America or any of the agencies or departments thereof, and this Court is without jurisdiction directly or indirectly, through the means of its processes or otherwise, to compel or control the exercise of the taxing powers by the Borough of Runnemede or any of the agencies thereof. This Court is, therefore, without jurisdiction to grant the relief prayed for in the complaint.

45. The rights of the plaintiff under the bonds, which were the basis of the judgment set forth in paragraph 12 of the complaint, merged in said judgment and by virtue of the entry of said judgment a new contract arose between the plaintiff and the Board of Education of the Borough of Runnemede as of December 5th, 1935, which was past the date of the enactment of the laws referred to in paragraphs 15 [fol.53] and 16 of the complaint, and by reason thereof any and all rights which the plaintiff may have in the premises are subject to the operation and effect of said laws.

Answer to Count Three

46. These defendants answering Count Three of the Complaint repeat as part hereof as though the same were herein fully and at length set forth, the answer made by these defendants to paragraphs 1 to 19, both inclusive, of Count

One, and to paragraph 2 of Count Two, as well as paragraphs 19, 20 and 21 of this answer.

47. Paragraphs 2 and 3 are denied.

48. These defendants, further answering paragraph 3, say that, at the time of the issuance of plaintiff's bonds and at the time of the entry of plaintiff's judgment set forth in paragraph 12 of the complaint, the laws of the State of New Jersey provided that taxes and municipal levies, levied and assessed on property within said State, could be compromised and settled, and that such Statutes do not require the consideration of such settlements to be in cash.

49. Paragraphs 4, 5, 6 and 7 are admitted.

50. Paragraph 8 and 9 are denied.

These defendants further answering Count Three of the complaint, by way of defense in point of law arising upon the face of the bill of complaint, say that:

51. These defendants repeat as part hereof as though the same were herein fully and at length set forth, the allegations contained in paragraphs 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 of this answer.

52. The complaint fails to set forth a cause of action in that, it fails to allege that the plaintiff is without a complete and adequate remedy at law.

Answer to Count Four

53. These defendants repeat as part hereof as though [fol. 54] the same were herein fully and at length set forth, the answers made by these defendants to paragraphs 1 to 19, both inclusive, of Count One of the complaint, and to paragraph 2 of Count Two of the complaint as well as answer set forth in paragraphs 19, 20 and 21 of this answer.

54. Paragraph 2 is denied.

These defendants further answering Count Four of the Complaint, by way of defense in point of law arising upon the face of the bill of complaint, say that:

55. These defendants repeat as part hereof as though the same were herein fully and at length set forth, the allegations contained in paragraphs 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 of this answer.

56. The complaint fails to set forth a cause of action in that, it fails to allege that the plaintiff is without a complete and adequate remedy at law.

Wherefore, these defendants jointly and severally pray that the complaint be dismissed with costs.

Joseph Vabalow, Solicitor for and of Counsel with Defendants, Earl Kircher, Conrad Weber and William G. Hirsch, Constituting the Board of Assessors of the Borough of Runnemede, New Jersey, and Albert W. Spencer, as Tax Collector of the Borough of Runnemede, New Jersey.

[fol. 55] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANTS, DAVID T. WILENTZ ET AL.—Filed July 31, 1936

The joint and several answer of the defendants David T. Wilentz, Attorney General of the State of New Jersey, J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, and Walter R. Darby, Commissioner of Municipal Accounts of the State of New Jersey, as and constituting the Municipal Finance Commission of the State of New Jersey.

These defendants, for answer to the bill of complaint, say:

[fol. 56] Answer to Count One

1. Paragraph 1 is admitted.

2. These defendants admit such allegations contained in paragraph 2 of Count One of plaintiff's bill as are descriptive of the parties sought to be made defendants to this suit, but make further answer that this Honorable Court has no power, under Section 266 of the Judicial Code (Section 380, Title 28, U. S. Code), to issue the injunction prayed against the defendants, Earl Kircher, Conrad Weber, and William G. Hirsch, as and constituting the Board of Assessors of the Borough of Runnemede, New Jersey, and Albert W. Spencer, Tax Collector of the Borough of Runnemede, New Jersey, in their several official capacities.

3. Paragraphs 3 to 8, both inclusive, are admitted.

4. Paragraph 9 is admitted, except that they say that the Statutes of New Jersey therein mentioned were amended by an act of the Legislature of the State of New Jersey approved April 3, 1936 (N. J. P. L. 1936, pp. 134, 136), by adding thereto the following provision, inter alia:

"3. Article III-A of the act of which this act is an amendment is hereby amended by adding thereto a new section to be numbered and to read as follows:

'355. Upon the application of any creditor made upon notice to the municipality and the commission, the Supreme Court may vacate, modify or restrict any statutory stay contained in this article.' "

[fol. 57] 5. Paragraph 10 is admitted except that they say that the Statutes of New Jersey therein mentioned were amended by an act of the Legislature of the State of New Jersey, approved June 26, 1936 (N. J. P. L. 1936, pp. —) and being Chapter 251, section d, by adding thereto the following provision, inter alia:

"(d) Upon the application of any creditor made upon notice to the School District and the Commission, the Supreme Court may vacate, modify or restrict any statutory stay contained in this Article."

6. Paragraphs 11 and 12 are admitted.

7. Paragraph 13 is admitted, save that these defendants deny that a certified copy of the writ of execution has been served upon the Assessors of said Borough or upon the Tax Collector of said Borough, as stated in said paragraph of said complaint; and these defendants further deny that Section 35 of the Execution Act, being 2 Compiled Statutes of New Jersey, page 2255, and Section 237 of the School Law, being 4 Compiled Statutes of New Jersey, page 4804, are in force and effect, or were in force and effect when this action was brought or when the bonds referred to in said complaint were issued. These defendants make further answer that Section 35 of the Execution Act, being 2 Compiled Statutes of New Jersey, page 2255, and Section 237 of the School Law, being 4 Compiled Statutes of New Jersey, page 4804, have been repealed by the enactment of the provisions of an act entitled "An Act for the assessment [fol. 58] and collection of taxes (Revision of 1918), P. L.

1918, C. 236, Sec. 505, p. 865, as amended by P. L. 1933, C. 266, Sec. 3, p. 713. These defendants further answer that all these acts hereinabove referred to in paragraph 7 of this answer are inapplicable to any municipality or school district where the Municipal Finance Commission is functioning.

8. Paragraph 14 is denied.

9. Paragraph 15 is denied: They further say that said Statutes of New Jersey, amended as set forth in paragraphs 4 and 5 of this answer, make adequate provision for the vacation, modification or restriction of the stay provided in the Statutes mentioned in paragraph 15 of the complaint.

10. As to paragraph 16 of Count One of plaintiff's bill of complaint, these defendants admit that such laws of New Jersey, as are therein referred to, were enacted after the issuance of the bonds now represented by plaintiff's judgment; and that the principles thereof staying proceedings in the State courts of the State of New Jersey for the satisfaction of judgments have been held to be constitutional and valid by the Court of Errors and Appeals of the State of New Jersey.

11. Paragraph 17 is denied.

12. Paragraph 18 is admitted, except that they say that the Borough Council, the governing body of the Borough of Runnemede, has no legal right or authority, and is under no [fol. 59] obligation to impose or put in force any provision for the levy and collection of a special tax to pay plaintiff's judgment; that the Board of Education of the Borough of Runnemede is a separate and distinct corporate entity, imposing, levying and raising its own taxes for school purposes; that the tax budget for its school purposes was, prior to the bringing of this suit, and within the statutory period prescribed by the laws of the State, to wit, on February 9 last, duly adopted; that the tax rate in the Borough for local municipal purposes, school, county and state purposes was struck and fixed by the County Board of Taxation on April 24, 1936, as prescribed by the laws of the State, and the current tax bills mailed out and collections made in conformity therewith; and that, if plaintiff's prayer were permitted to prevail, there would result utter confusion and financial chaos in the municipality; and further, that no proceedings have been instituted, or have as yet even been

contemplated with respect to next year's budget or tax levy for school purposes.

13. Paragraph 19 is denied, except that they say that said Municipal Finance Commission is a Board or Commission of the State of New Jersey functioning in the Borough and School District of Runnemede, created and established, and possessing the powers and duties conferred by an act entitled "An Act Concerning Municipal Finances," approved April 28, 1931, (N. J. P. L. 1931, p. 830) and the several amendments and supplements thereof, and an act entitled [fol. 60] "An Act to supplement an act entitled 'An Act to establish a thorough and efficient system of free public schools, and to provide for the maintenance, support and management thereof,' " approved October 9, 1903 (N. J. P. L. 1904, p. 5).

14. Paragraph 20 is denied, except that these defendants admit such allegations as set forth the obtaining by plaintiff of a judgment, the return of execution thereon nulla bona, and the filing of a petition for a writ of mandamus. They deny that the mandamus action therein referred to will not be decided for some time, asserting that it will be decided in due course of judicial process, and that no stay or injunction was sought by the Municipal Finance Commission in connection with the mandamus proceedings referred to by said plaintiff in said paragraph 20 of said Count. They further say that the budgets of both the Borough and School District for the current year respectively of each were duly adopted as set forth in paragraph 9 of this answer, the tax rate for the Municipality and School District, and the County and State Taxes were fixed and determined, tax bills were sent out and in many instances paid in full, based upon such tax rate, months prior to the relief sought by this bill of complaint.

15. Paragraph 21 is denied.

16. Paragraph 22 is denied, except that they say that the Statutes of New Jersey provide that:

"Upon the application of any creditor made upon notice [fol. 61] to the municipality and the Commission, the Supreme Court may vacate, modify or restrict any statutory stay contained in this Article." (N. J. P. L. 1936, Art. III-A, Sec. 355, p. 134, 136) and (N. J. P. L. 1936, p. —, Ch. 251, paragraph 17, section d).

17. Paragraph 23 is denied.

Answer to Count Two

18. Paragraphs 1 to 13, both inclusive, of the answer to Count One of the complaint are repeated in answer to paragraph 1 of Count Two, with the same force and effect as though fully set forth herein.

19. Paragraph 2 is admitted.

20. Paragraphs 3, 4 and 5 are denied.

Answer to Count Three

21. Paragraphs 1 to 13, both inclusive, of the answer to Count One of the complaint and paragraph 19 of the answer to Count Two of the complaint are repeated in answer to paragraph 1 of Count Three, with the same force and effect as though fully set forth herein.

22. Paragraph 2 is admitted.

23. These defendants admit, as to paragraph 3 of Count Three, that at the time of the issuance of plaintiff's bonds, the Laws of the State of New Jersey provided that taxes levied and assessed upon property within such State should be paid in lawful money of the United States only, but make further answer that at the same time the Laws of the State of New Jersey permitted and allowed of compromise settle- [fol. 62] ments of sums due for taxes.

24. Paragraphs 4, 5, 6 and 7 are admitted.

25. Paragraphs 8 and 9 are denied. Further answering said paragraphs, these defendants say that since October, 1935, this Commission has refrained from lending its approval to the acceptance of bonds of the municipality in payment of past due taxes in every case presented to the Commission for approval save only in those instances in which the negotiations for such settlements were actually in the course of being negotiated at the time when (October 11, 1935) the Commission's Rule to decline approval was adopted, and excepting those cases in which unanimous consent of all bond creditors were secured favoring such settlement. The two instances referred to in paragraph 6 of Count Three were such exceptions, actually in course of being negotiated when the Commission's rule was adopted, and were permitted to be concluded for that reason. No other or further acceptance of bonds in payment of taxes

past due will secure these defendants' approval pending the settlement of the legal problem raised.

Answer to Count Four

26. Paragraphs 1 to 13, both inclusive, of the answer to Count One of the complaint and paragraph 19 of the answer to Count Two of the complaint are repeated in answer to paragraph 1 of Count Four, with the same force and effect, as though fully set forth herein.

27. Paragraph 2 is denied.

[fol. 63] Further answering, by way of defense in point of law arising upon the face of the Bill of Complaint, these defendants say:

First Separate Defense

The bill of complaint does not allege a cause for equitable relief against these defendants or any or either of them.

Second Separate Defense

Plaintiff is in laches by reason of its failure to seasonably assert the rights claimed in the bill of complaint.

Third Separate Defense

Plaintiff's bill is prematurely filed as to future budgets.

Fourth Separate Defense

Plaintiff has plain, adequate and complete remedies at law under the Laws of the State of New Jersey.

Fifth Separate Defense

Plaintiff has a plain, adequate and complete remedy at law under the Laws of the United States.

Sixth Separate Defense

No injunction, in accordance with the prayers of the bill of complaint, is authorized by Section 266 of the Federal Judicial Code (Section 380, Title 28, U. S. Code) under which this Court of three judges was assembled and constituted, because this suit is not brought to suspend or re-
[fol. 64] strain the enforcement, operation or execution of any Statute of the State of New Jersey by restraining the action of any officer of such State in the enforcement or execution of such Statute, or in the enforcement or execution of an order made by an administrative board or commission acting in and pursuant to the Statutes of said State.

Seventh Separate Defense

This Court, assembled pursuant to the provisions of Section 266 of the Federal Judicial Code (Section 380, Title 28, U. S. Code), has no power to enjc defendants, Earl Kircher, Conrad Weber and William G. Hirsch, as the Board of Assessors, and Albert W. Spencer, Tax Collector, respectively, of the Borough of Runnemede, N. J., from assessing, levying and collecting any taxes in and for the said Borough of Runnemede for the fiscal year 1936, ordered levied pursuant to the Statutes of the State and local ordinances, without including plaintiff's judgment or such part thereof as may finally be ordered in the mandamus proceedings now pending in the District Court of the United States for the District of New Jersey, because said defendants are not State officers or a State Board or Commission within the meaning of Section 266 of the Federal Judicial Code (Section 380, Title 28, U. S. Code).

Eighth Separate Defense

This Court has no jurisdiction of the bill of complaint because the suit is in fact brought against the State of New [fol. 65] Jersey by a citizen of another State in violation of the eleventh amendment of the Constitution of the United States.

Ninth Separate Defense

Any injunction, if granted according to the prayers of the bill of complaint, would exceed the powers of this Court by interfering with the internal and local government and affairs of the State of New Jersey and one of its municipal subdivisions in violation of the tenth amendment of the Constitution of the United States.

Wherefore, these defendants, jointly and severally, pray that the complaint be dismissed with costs.

(S.) William A. Stevens, Solicitor and of Counsel for Defendants, David T. Wilentz, Attorney General of the State of New Jersey, J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, and Walter R. Darby, Commissioner of Municipal Accounts of the State of New Jersey, as and constituting the Municipal Finance Commission of the State of New Jersey. E. J. Dimock, Arnold Frye, Barent L. Visscher, of Counsel.

[fol. 66] IN UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

In Equity. E-5515

SOVEREIGN CAMP, WOODMEN OF THE WORLD, Complainant,

vs.

DAVID T. WILENTZ, Attorney General of the State of New Jersey; J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, and Walter R. Darby, Commissioner of Municipal Accounts of the State of New Jersey, as and Constituting the Municipal Finance Commission of the State of New Jersey; Earl Kircher, Conrad Weber and William G. Hirsch, Members of the Board of Assessors of the Borough of Runnemede, New Jersey, and Albert W. Spencer, Tax Collector of the Borough of Runnemede, New Jersey, Defendants

On Bill for Injunction, etc.

Arthur T. Vanderbilt, for Complainant.
William A. Stevens, for Municipal Finance Commission.
E. J. Dimock, B. L. Visscher and Arnold Frye, of Counsel.
Joseph Varbalow, for Members of Board of Assessors and Tax Collector of the Borough of Runnemede.
Harry Grossman, of Counsel.

Before Davis, Circuit Judge, and Avis and Forman, District Judges

OPINION—Filed March 21, 1938

[fol. 67] AVIS, District Judge:

The bill of complaint in this cause contains four counts; the first, in general, alleging that the School District of Runnemede, New Jersey, is coterminous with the Borough of Runnemede, a municipal corporation of the State of New Jersey, and that complainant is the owner and holder of a final judgment, in the amount of $21,776 21, entered in this court on December 5, 1935, against the Board of Education of said Borough on certain bonds then matured, and

overdue coupons held by said complainant and unpaid; that execution was issued on said judgment, served by the United States Marshal on the officers of said Borough as required by law, and returned nullo bona on January 5, 1936; that the officers of said Borough have failed and neglected to provide for the payment of said judgment in accordance with the statutes of the State of New Jersey and to make an assessment upon the persons and property in said Borough to raise the money to satisfy said judgment and execution.

The first count of said bill further alleges that a mandamus proceeding is pending in this court, which is undetermined.

It is alleged that the failure and refusal of the officers of said Borough to make said assessment and levy is based upon the fact that said School District is and has been under the control of the Municipal Finance Commission of the State of New Jersey, under the statutes of said State; and in accordance with the provisions of said statutes no judgment, levy or execution against such School District, or property thereof shall be enforced until otherwise specially ordered by the Supreme Court of the State of New Jersey, or a Justice thereof, after notice to the Commission, &c.

It is further alleged that the statute authorizing the said [fol. 68] Commission was passed and approved after the issue of the bonds and coupons, the basis of the judgment so held by the complainant.

The prayers of this count are:

(a) That subpoena issue.

(b) That defendant Municipal Finance Commission be restrained from functioning in said School District.

(c) That said Commission be temporarily restrained.

(d) That this court adjudge and declare Chapter 330, Laws of 1933, and Chapters 195 and 258, Laws of 1935, as amended and supplemented, unconstitutional and void insofar as they attempt to affect the enforceability of complainant's bonds and judgment by staying proceedings for the enforcement thereof.

(e) That the assessing and collecting officers of said Borough be restrained from assessing, levying or collecting any taxes in said Borough for the year 1936, without including the amount due on complainant's judgment.

(f) That it be adjudged and declared that complainant's right to collect is governed solely by Section 35 of the Execution Act and Section 237 of the School Laws of New Jersey, as cited in the bill of complaint.

(g) Other and further relief as may be equitable and just.

The second count embodies all of the allegations of fact and law contained in the first count; alleges that it owns bonds of the School District of Runnemede, dated June 1, 1930, numbered 9 to 78, inclusive, in the amount of $1000 each, with the interest coupons attached; the principal of said bonds accruing serially, and that by reason of the enactment of the statutes relating to the Municipal Finance Commission, which attempt to restrain the enforcement of any obligations of a municipality under the supervision [fol. 69] of said Commission, a cloud of unenforceability has been publicly cast upon complainant's bonds, and that by reason thereof complainant has been and will continue to be irreparably damaged.

The prayers in this count are:

(a) For subpoena.

(b) That the cloud be removed by restraint against defendants Wilentz, Martin and Darby, constituting the Municipal Finance Commission, and the Commission restrained from functioning in said School District.

(c) That temporary or interlocutory injunction and restraint issue.

(d) That the statutes creating the Municipal Finance Commission be declared unconstitutional and void as to complainant's bonds.

(e) That complainant's rights to compel a levy and collection of taxes is governed solely by the Execution Act and School Laws of the State of New Jersey.

(f) For other and further relief as may be equitable and just.

The third count realleges the facts and law as contained in the first count, and further alleges that the Commission has approved resolutions of the Borough providing for compromise of certain taxes and assessments due said Borough

by accepting bonds in payment thereof. Alleges that such action gives a preference; that the security of complainant's bonds is thereby impaired, all of which is in violation of the United States Constitution, to wit, Article I, Section 10.

The prayers are:

(a) For subpoena.

(b) That the Municipal Finance Commission be restrained from assenting to such compromises.

(c) That said Commission be restrained from author- [fol. 70] izing or assenting to the acceptance of any medium other than lawful money in payment of taxes.

(d) That the tax collector of the Borough be restrained from receiving payment of taxes, except from payment of full amount, interest and penalties.

(e) That said collector be restrained from accepting any medium in payment of taxes other than lawful money.

(f) That this court decree that Section 6 of Chapter 330, Laws of 1933, as amended and supplemented, to be unconstitutional and void as to complainant's judgment and bonds, as being contrary to Article I, Section 10 of the United States Constitution.

(g) For other and further relief.

Count four realleges and reaffirms the facts and law alleged in the first count and in paragraph 2 of the second count, and is in the nature of an action for a declaratory decree as to the right of the complainant to make collection on its bonds and coupons because of the unconstitutionality of the stays contained in the Municipal Finance Commission Acts of the State of New Jersey.

Its prayers are:

(a) For subpoena.

(b) That this court hold, adjudge and declare that, as to the School District bonds issued prior to their enactment, the Municipal Finance Commission Acts of the State of New Jersey are unconstitutional and void, contrary to Article I, Section 10 of the United States Constitution.

(c) That the Commission be enjoined in the enforcement and execution of said statutes.

(d) That this court restrain the Commission and its members from functioning in the School District of the Borough of Runnemede.

[fol. 71] (e) For other and further relief.

The matter came before the Court originally on June 28, 1936, when it appeared that the validity of a State statute was challenged, requiring the convening of a Three Judge Court. Arrangements were made to convene such a court, and on the aforesaid date an order to show cause was issued, returnable on July 9, 1936, at Trenton.

On that date, after a hearing, it was agreed in open court that the defendants would not accept or approve the acceptance, until the further order of the court, of bonds of the Borough or School District of Runnemede in payment of current or delinquent taxes, and further that counsel would prepare for final hearing on or before September 15, 1936. Upon this agreement, no preliminary injunction was issued, and decision on all questions was postponed until final hearing.

Answer for all defendants was filed on August 1, 1936, and final hearing took place on October 29, 1936. On this date a stipulation of certain facts, signed by counsel for the respective parties, was filed, and some witnesses produced who gave their testimony.

Argument has been heard and briefs submitted.

From the testimony taken, and the stipulation filed, we find as facts:

(1) That the Borough of Runnemede is a municipal corporation of the State of New Jersey.

(2) That the Board of Education of the Borough of Runnemede is coterminous with the Borough of Runnemede.

(3) That on or about June 1, 1930 the Board of Education of the Borough of Runnemede issued and sold $78,000 school bonds, dated June 1, 1930, numbered 1 to 78, inclu- [fol. 72] sive, of the denomination of $1000 each, and bearing interest at the rate of five and one-quarter percent. per annum, payable semi-annually on the first days of June and December of each year; that complainant purchased all of said bonds; that the bonds were serial bonds, maturing in numerical order, $2000 on June first in each year 1932 to 1937, inclusive, and $3000 on June first in each year 1938

to 1959, inclusive; that on June 1, 1932, Numbers 1 and 2 of said bonds were paid; that the bonds thereafter maturing have not been paid, and that the interest on the remaining bonds, which became due on June 1, 1932, or at any subsequent date, has not been paid.

(4) That upon May 15, 1934, after a summary investigation, and upon application of the Borough of Runnemede, Frank T. Lloyd, Justice of the Supreme Court of the State of New Jersey, made and entered an order, in which it was determined that the Borough was unable to meet its obligations, and the Municipal Finance Commission was authorized and instructed to function in said borough with all the powers and duties conferred by the statute.

(5) That thereupon the said Commission commenced to function in said Borough, and has since that time so functioned with relation thereto, as well as with relation to the said Board of Education.

(6) That judgment on the overdue bonds, and the delinquent interest represented by the coupons upon which default had been made, was entered in this court in a suit brought by complainant on December 5, 1935 for the sum of $21,776.21.

(7) That execution was issued thereon, on December 24, 1935, directed to the Marshal of the District of New Jersey, which execution was in the usual form, and was returned by the said Marshal as served upon Gardner S. Driver, Secretary of the Camden County Board of Taxation, Albert W. [fol. 73] Spencer, Tax Collector of the Borough of Runnemede, and William G. Hirsch, Tax Assessor for said Borough.

(8) That Arthur T. Vanderbilt, counsel for complainant, on January 3, 1936, addressed a letter to Conwood (Conrad) Weber, Secretary, Board of Tax Assessments of said Borough, reciting the serving of the execution, and inquiring as to whether the Board of Assessors would assess and levy the amount due on the execution, and that no reply thereto was ever received.

(9) That the said Arthur T. Vanderbilt, counsel as aforesaid, also wrote and despatched a letter to the Secretary of the Camden County Board of Taxation, requesting information as to whether the said Board of Taxation would add the

amount due upon the execution to the amount certified by the taxing officials of said Borough, pursuant to Section 505 of P. L. 1918, Chapter 236. To this letter said Secretary replied, advising that the matter would be referred to his Board, and that said Board would probably refer the matter to the county solicitor. The county solicitor, on or about February 24, 1936, by letter, advised counsel for complainant that the Camden County Board of Taxation would not so add the amount, until the determination of the mandamus proceedings then pending.

(10) That the Board of Assessors failed and omitted to add the amount of said judgment to the moneys to be raised for the year 1936, and that one reason for said failure and omission was because the Municipal Finance Commission was functioning in the municipality, and that said assessors made no change in the rate as fixed by the county tax board; that the county tax board made no change to include the amount due on the execution because it had been advised by special counsel of the Municipal Finance Commission that litigation was then pending in the United States [fol. 74] District Court for the District of New Jersey as to the necessity of adding said additional amount.

(11) Although the evidence produced by complainant relating to the effect of the legislation claimed to be unconstitutional upon the value of municipal securities, is undisputed, it is not sufficient to establish the fact claimed by complainant that said legislation had publicly cast a cloud of unenforceability, or that by reason thereof the market value of complainant's bonds has been greatly depreciated.

Conclusions of law:

We are satisfied that, under the provisions of Section 266 of the Judicial Code (28 U. S. C. A. sec. 380), the issues raised in the pleadings in this cause have been legally presented to a Three-Judge Court, and that this Court, as constituted, has jurisdiction to dispose of the question of preliminary injunction, as well as the determination of the issues presented by the pleadings. All matters involved were, by stipulation and order, continued to final hearing, upon the agreement of defendants not to accept or approve acceptance of bonds in payment of current or delinquent taxes until the further order of the Court.

We hold that the members of the Municipal Finance Commission are proper, necessary and indispensable parties to the action because of the supervisory control which the act of the Legislature of the State of New Jersey gives them over the municipality in question; that as such members they are given authority to enforce the provisions of the act, and that such authority invests them with powers making it necessary that they should be party defendants for the enforcement of any decree that may be made in this action. This conclusion applies to all of the counts in the bill of complaint.

We also determine that the rights of the complainant [fol. 75] are not impaired or changed by reason of the fact that the judgment on bonds and coupons has been entered in this court, but that its rights are to be determined by the law in effect at the time the bonds were issued and the contract made.

We have examined the proofs and considered the argument and briefs submitted as to the relief prayed for in count one, and have concluded, without citing the many authorities presented on behalf of all parties, that the complainant is entitled to a decree adjudging and declaring Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, as amended and supplemented, to be unconstitutional and void insofar as they affect the right of the complainant to enforce its judgment obtained and entered in this court, and that such enforcement shall be in accordance with the laws existing in the State of New Jersey at the time of the issuance and sale of the bonds in question, and the laws applicable are Section 35 of the Execution Act (2 Comp. Stats. p. 2256) and Section 237 of the School Law (4 Comp. Stats. 4804). The provisions of the Tax Act of 1918 did not, by implication, repeal the above mentioned laws, upon which the complainant relies. Such repeals are not favored, and the provisions of the various statutes are not materially inconsistent.

The defendants, members of the Municipal Finance Commission, will be restrained from functioning in the Borough of Runnemede, to the extent that such functioning may be inconsistent with the right of the complainant to enforce its execution in the manner herein stated.

The prayer to enjoin and restrain the Assessors of said Borough from assessing and levying the taxes, and the Collector from collecting the same, without including

therein the amount of complainant's judgment is denied, as [fol. 76] beyond the power of this Court, as well as unnecessary in view of the relief granted on other prayers.

We are not construing the provisions of the Municipal Finance Commission Acts of the State of New Jersey, its constitutionality or its effect, except as the stays therein contained affect the right of the complainant to enforce its judgment.

As to count two, we have determined as a fact that the complainant has not produced sufficient evidence to satisfy the Court that it should use the extraordinary remedy of injunction to restrain the members of the Municipal Finance Commission from functioning in the Borough of Runnemede, and the conclusions as to count one of the complaint give ample and sufficient protection for the collection of the balance of the bonds owned by complainant.

The necessity for an injunction under count three appears to be moot, if the Commission adheres to its present policy. However, it is apparent that settlement of taxes by the acceptance of bonds may materially interfere with the complainant in the collection of its judgment, and restraint will be granted enjoining the defendants from making settlement for taxes by any medium except in accordance with the laws of the State of New Jersey.

Count four is based upon, and asks for relief under, the Declaratory Judgment Act (28 U. S. C. A. sec. 400). An examination of the cases indicates that the complainant has an "actual controversy", under the provisions of that act, and is entitled to a decree of similar character to that granted herein with relation to count one, applicable to the remainder of complainant's bonds, if and when judgment may be entered thereon, or any portion thereof, in this court and execution issued.

Decree will be made in accordance with this opinion.

[fols. 77-78] In United States District Court

[Title omitted]

Order for Substitution of Attorney—Filed May 24, 1938

It appearing to the Court that Joseph Varbalow, Esq., Solicitor for and Harry Grossman, Esq., Of Counsel with

defendants, Earl Kircher, Conrad Weber and William G. Hirsch, members of the Board of Assessors and Albert W. Spencer, Tax Collector of the Borough of Runnemede, New Jersey, in the above entitled cause, consent hereto;

It is, on this 23- day of May, 1938, Ordered, that S. Lewis Davis, Esq., be and he is hereby substituted as Solicitor for the above named defendants and that Frank T. Lloyd, Esq., be and he is hereby substituted as Counsel with said defendants in the place and stead of said Joseph Varbalow, Esq., and Harry Grossman, Esq.

John Boyd Avis, U. S. District Judge, for the Court.

We consent to the entry of the foregoing Order.

Joseph Varbalow, Solicitor for and Harry Grossman, of Counsel with Earl Kircher, Conrad Weber and William G. Hirsch, Members of the Board of Assessors and Albert W. Spencer, Tax Collector of the Borough of Runnemede.

[fol. 79] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed June 6, 1938

From the testimony taken and the stipulation filed, we find as facts:

1. That the Borough of Runnemede is a municipal corporation of the State of New Jersey.

2. That the Board of Education of the Borough of Runnemede is coterminous with the Borough of Runnemede.

3. That on or about June 1, 1930, the Board of Education of the Borough of Runnemede issued and sold $78,000 school bonds, dated June 1, 1930, numbered 1 to 78, inclusive, of the denomination of $1,000 each, and bearing interest at the rate of five and one-quarter per cent (5¼%) per annum, payable semi-annually on the first days of June and December of each year; that complainant purchased all of said bonds; that the bonds were serial bonds, maturing in numerical [fol. 80] order, $2,000 on June first in each year 1932 to 1937,

inclusive, and $3,000 on June first in each year 1938 to 1959, inclusive; that on June 1, 1932, Numbers 1 and 2 of said bonds were paid; that the bonds thereafter maturing have not been paid, and that the interest on the remaining bonds, which became due on June 1, 1932, or at any subsequent date, has not been paid.

4. That on May 15, 1934, after a summary investigation, and upon application of the Borough of Runnemede, Frank T. Lloyd, Justice of the Supreme Court of the State of New Jersey, made and entered an order, in which it was determined that the Borough was unable to meet its obligations, and the Municipal Finance Commission was authorized and instructed to function in said Borough with all the powers and duties conferred by the statute.

5. That thereupon the said Commission commenced to function in said Borough, and has since that time so functioned with relation thereto, as well as with relation to the said Board of Education.

6. That judgment on the overdue bonds, and the delinquent interest represented by the coupons upon which default had been made, was entered in this court in a suit brought by complainant on December 5, 1935, for the sum of $21,776.21.

7. That execution was issued thereon, on December 24, 1935, directed to the Marshal of the District of New Jersey, which execution was in the usual form, and was returned by the said Marshal as served upon Gardner S. Driver, Secretary of the Camden County Board of Taxation, Albert W. Spencer, Tax Collector of the Borough of Runnemede, and William G. Hirsch, Tax Assessor for said Borough.

8. That Arthur T. Vanderbilt, counsel for complainant, [fol. 81] on January 3, 1936, addressed a letter to Conwood (Conrad) Weber, Secretary, Board of Tax Assessments of said Borough, reciting the serving of the execution, and inquiring as to whether the Board of Assessors would assess and levy the amount due on the execution, and that no reply thereto was ever received.

9. That the said Arthur T. Vanderbilt, counsel as aforesaid, also wrote and despatched a letter to the Secretary of the Camden County Board of Taxation, requesting informa-

tion as to whether the said Board of Taxation would add the amount due upon the execution to the amount certified by the taxing officials of said Borough, pursuant to Section 505 of P. L. 1918, chapter 236. To this letter said Secretary replied, advising that the matter would be referred to his Board, and that said Board would probably refer the matter to the county solicitor. The county solicitor, on or about February 24, 1936, by letter, advised counsel for complainant that the Camden County Board of Taxation would not so add the amount, until the determination of the mandamus proceedings then pending.

10. That the Board of Assessors failed and omitted to add the amount of said judgment to the moneys to be raised for the year 1936, and that one reason for said failure and omission was because the Municipal Finance Commission was functioning in the municipality, and that said assessors made no change in the rate as fixed by the county tax board; that the county tax board made no change to include the amount due on the execution because it had been advised by special counsel of the Municipal Finance Commission that litigation was then pending in the United States District Court for the District of New Jersey as to the necessity of adding said additional amount.

[fol. 82] 11. Although the evidence produced by complainant relating to the effect of the legislation claimed to be unconstitutional upon the value of municipal securities is undisputed, it is not sufficient to establish the fact claimed by complainant that said legislation has publicly cast a cloud of unenforceability, or that by reason thereof the market value of complainant's bonds has been greatly depreciated.

We make the following conclusions of law:

1. We are satisfied that, under the provisions of Section 266 of the Judicial Code (28 U. S. C. A. sec. 380), the issues raised in the pleadings in this cause have been legally presented to a Three-Judge Court, and that this Court, as constituted, has jurisdiction to dispose of the question of preliminary injunction, as well as the determination of the issues presented by the pleadings. All matters involved were, by stipulation and order, continued to final hearing, upon the agreement of defendants not to accept or approve ac-

ceptance of bonds in payment of current or delinquent taxes until the further order of the Court.

2. We hold that the members of the Municipal Finance Commission are proper, necessary and indispensable parties to the action because of the supervisory control which the act of the Legislature of the State of New Jersey gives them over the municipality in question; that as such members they are given authority to enforce the provisions of the act, and that such authority invests them with powers making it necessary that they should be party defendants for the enforcement of any decree that may be made in this action. This conclusion applies to all of the counts in the bill of complaint.

[fol. 83] 3. We also determine that the rights of the complainant are not impaired or changed by reason of the fact that the judgment on bonds and coupons has been entered in this Court, but that its rights are to be determined by the law in effect at the time the bonds were issued and the contract made.

4. We have examined the proofs and considered the argument and briefs submitted as to the relief prayed for in count one, and have concluded, without citing the many authorities presented on behalf of all parties, that the complainant is entitled to a decree adjudging and declaring Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, as amended and supplemented, to be unconstitutional and void in so far as they affect the right of the complainant to enforce its judgment obtained and entered in this Court, and that such enforcement shall be in accordance with the laws existing in the State of New Jersey at the time of the issuance and sale of the bonds in question, and the laws applicable are Section 35 of the Execution Act (2 Comp. Stats. p. 2256) and Section 237 of the School Law (4 Comp. Stats. 4804). The provisions of the Tax Act of 1918 did not, by implication, repeal the above mentioned laws, upon which the complainant relies. Such repeals are not favored, and the provisions of the various statutes are not materially inconsistent.

5. The defendants, members of the Municipal Finance Commission, will be restrained from functioning in the Borough of Runnemede, to the extent that such functioning may

be inconsistent with the right of the complainant to enforce its execution in the manner herein stated.

6. The prayer to enjoin and restrain the Assessors of said Borough from assessing and levying the taxes, and the Col- [fol. 84] lector from collecting the same, without including therein the amount of complainant's judgment is denied, as beyond the power of this Court, as well as unnecessary in view of the relief granted on other prayers.

7. We are not construing the provisions of the Municipal Finance Commission Act of the State of New Jersey, its constitutionality or its effect, except as the stays therein contained affect the right of the complainant to enforce its judgment.

8. As to count two, we have determined as a fact that the complainant has not produced sufficient evidence to satisfy the Court that it should use the extraordinary remedy of injunction to restrain the members of the Municipal Finance Commission from functioning in the Borough of Runnemede, and the conclusions as to count one of the complaint give ample and sufficient protection for the collection of the balance of the bonds owned by complainant.

9. The necessity for an injunction under count three appears to be moot, if the Commission adheres to its present policy. However, it is apparent that settlement of taxes by the acceptance of bonds may materially interfere with the complainant in the collection of its judgment, and restraint will be granted enjoining the defendants from making settlement for taxes by any medium except in accordance with the laws of the State of New Jersey.

10. Count four is based upon, and asks for relief under, the Declaratory Judgment Act (28 U. S. C. A. sec. 400). An examination of the cases indicates that the complainant has an "actual controversy", under the provisions of that act, and is entitled to a decree of similar character to that granted herein with relation to count one, applicable to the [fol. 85] remainder of complainant's bonds, if and when judgment may be entered thereon, or any portion thereof, in this Court and execution issued.

Dated June 6, 1938.
For the Court.

John Boyd Avis, District Judge.

We hereby approve the foregoing findings of fact and conclusions of law as being in accordance with the opinion of the Court.

Arthur T. Vanderbilt, Solicitor for Complainant. William A. Stevens, Solicitor for Defendants, Wilentz, Martin and Darby, as and constituting the Municipal Finance Commission. S. Lewis Davis, Solicitor for Defendants, Kircher, Weber and Hirsch, Members of the Board of Assessors, and Spencer, Tax Collector, of the Borough of Runnemede.

[fol. 86] IN UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

In Equity. E-5515

SOVEREIGN CAMP, WOODMEN OF THE WORLD, Complainant,

vs.

DAVID T. WILENTZ, Attorney General of the State of New Jersey; J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, and Walter R. Darby, Commissioner of Municipal Accounts of the State of New Jersey, as and Constituting the Municipal Finance Commission of the State of New Jersey; Earl Kircher, Conrad Weber and William G. Hirsch, Members of the Board of Assessors of the Borough of Runnemede, New Jersey, and Albert W. Spencer, Tax Collector of the Borough of Runnemede, New Jersey, Defendants

On Bill for Injunction, etc.

FINAL DECREE—Filed June 6, 1938

This cause came on to be heard before this Court specially constituted under Section 266 of the United States Judicial Code on October 29, 1936 and was argued by counsel and thereupon, upon consideration thereof and the opinion of this Court thereon and special findings of fact and separate conclusions of law thereon having been filed,

It is Ordered, Adjudged and Decreed as follows:

With Respect to Count One of the Bill of Complaint:

I. In response to subdivision B of the prayers of Count One of the bill of complaint which prays that defendant

Municipal Finance Commission be permanently enjoined and restrained from functioning in the School District of the Borough of Runnemede, New Jersey,

[fol. 87] It is Ordered, Adjudged and Decreed that defendant Municipal Finance Commission be permanently enjoined and restrained from functioning in the Borough of Runnemede, New Jersey, to the extent that such functioning may be inconsistent with the right of the complainant to enforce its execution in the manner herein stated, but without prejudice to any of the powers or duties of the Municipal Finance Commission under the Municipal Finance Commission Act except as the stays therein contained affect the right of the complainant to enforce its judgment.

II. In response to subdivision D of the prayers of Count One of the bill of complaint which prays that this Court hold, adjudge and declare Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, as amended and supplemented, to be unconstitutional and void insofar as they attempt to affect the enforceability of complainant's bonds and complainant's judgment by staying proceedings for the enforcement thereof,

It is Ordered, Adjudged and Decreed that Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, as amended and supplemented, are unconstitutional and void insofar as they affect the right of the complainant to enforce its judgment obtained and entered in this Court.

III. The prayer of subdivision E of Count One of the bill of complaint which prays that, in aid of the mandamus proceedings now pending, defendants Earl Kircher, Conrad Weber and William G. Hirsch, as the Board of Assessors, and Albert W. Spencer, Tax Collector, respectively, of the Borough of Runnemede, New Jersey, be enjoined and restrained from assessing, levying and collecting any taxes in and for said Borough for the fiscal year 1936 without [fol. 88] including therein the amount of complainant's judgment or such part thereof as may finally be ordered in the mandamus proceedings now pending in the District Court of the United States for the District of New Jersey, is Denied.

IV. In response to subdivision F of the prayers of Count One of the bill of complaint which prays that this Court hold, adjudge and declare that complainant's rights to compel a

levy and collection of taxes for the satisfaction of its judgment are governed solely by Section 35 of the Execution Act of New Jersey, being 2 Compiled Statutes of New Jersey, page 2256, and Section 237 of the School Law of New Jersey, being 4 Compiled Statutes of New Jersey, page 4804.

It is Ordered, Adjudged and Decreed that the enforcement of complainant's judgment shall be in accordance with the laws existing in the State of New Jersey at the time of the issuance and sale of the bonds in question, and the laws applicable are Section 35 of the Execution Act (2 Comp. Stats. p. 2256), and Section 237 of the School Law (4 Comp. Stats. p. 4804), and that the said sections were not repealed by the provisions of the Tax Act of 1918.

With Respect to Count Two of the Bill of Complaint:

V. The prayer of subdivision B of Count Two of the bill of complaint which prays that this Court remove the cloud upon the enforceability of complainant's bonds and prevent a multiplicity of suits by permanently enjoining and restraining defendants Wilentz, Martin and Darby, as and constituting the Municipal Finance Commission, from functioning in the School District of the Borough of Runnemede, New Jersey, is Denied.

[fol. 89] VI. The prayer of subdivision D of Count Two of the bill of complaint which prays that this Court hold, adjudge and declare Sections 8 and 9 of Chapter 330, Laws of New Jersey 1933, and Chapter 195 and Section 17 of Chapter 258, Laws of New Jersey 1935, all as amended and supplemented, to be unconstitutional and void as to complainant's bonds, as being contrary to Article I, Section 10 of the Constitution of the United States providing that no State shall pass any law impairing the obligation of contracts, is Denied as unnecessary in view of the relief granted with respect to Count One.

VII. The prayer of subdivision E of Count Two of the bill of complaint which prays that this Court hold, adjudge and declare that complainant's rights to compel a levy and collection of taxes for the satisfaction of its judgment are governed solely by Section 35 of the Execution Act of New Jersey, being 2 Compiled Statutes of New Jersey, page 2256, and Section 237 of the School Laws of New Jersey,

being 4 Compiled Statutes of New Jersey, page 4804, is Denied as unnecessary in view of the relief granted with respect to Count One.

With Respect to Count Three of the Bill of Complaint:

VIII. In response to subdivisions B, C, D, E and F of the prayers of Count Three of the bill of complaint which pray that defendant Municipal Finance Commission be permanently enjoined and restrained by injunction from assenting to the compromising of delinquent taxes due and owing to the Borough of Runnemede, New Jersey, for an amount less than the full amount due thereon, that defendant Municipal Finance Commission be permanently enjoined and re- [fo. 30] strained by injunction from authorizing or assenting to the acceptance of any medium other than lawful money in payment of taxes now or hereafter to become due and owing to the Borough of Runnemede, New Jersey, that defendant Albert W. Spencer, Tax Collector of the Borough of Runnemede, New Jersey, be permanently enjoined and restrained by injunction from receiving payment of taxes and giving a receipt of payment in full and showing payment in full on the tax books and records of the Borough of Runnemede, New Jersey, except upon payment of the full amount, principal, interest at the legal rate, and penalties, that defendant Albert W. Spencer, Tax Collector of the Borough of Runnemede, New Jersey, be permanently enjoined and restrained by injunction from accepting any medium other than lawful money in payment of taxes now or hereafter to become due and owing to the Borough of Runnemede, New Jersey, and that this Court hold, adjudge and declare Section 6 of Chapter 330, Laws of New Jersey 1933, as amended and supplemented, to be unconstitutional and void as to complainant's judgment and bonds, as being contrary to Article I, Section 10 of the Constitution of the United States providing that no State shall pass any law impairing the obligation of contracts,

It is Ordered, Adjudged and Decreed that acceptance of bonds in settlement of taxes may materially interfere with the complainant in the enforcement of its judgment, and that defendants be and they hereby are enjoined from making settlement for taxes due and owing to the Borough of Runemede, New Jersey, by any medium except in accordance with the laws of the State of New Jersey.

[fol. 91] With Respect to Count Four of the Bill of Complaint:

IX. In response to subdivision B of the prayers of Count Four of the bill of complaint which prays that this Court hold, adjudge and declare that, as to school district bonds issued prior to their enactment, Sections 8 and 9 of Chapter 330, Laws of New Jersey 1933, and Chapters 191, 195 and 258, Laws of New Jersey 1935, all as amended and supplemented, are unconstitutional and void as being contrary to Article I, Section 10 of the Constitution of the United States, which provides that no state shall pass any law impairing the obligation of contracts,

It is Ordered, Adjudged and Decreed that Sections 8 and 9 of Chapter 330, Laws of New Jersey 1933, and Chapters 191, 195 and 258, Laws of New Jersey 1935, all as amended and supplemented are, as to school district bonds held by complainant issued prior to their enactment, if and when judgment may be entered thereon or on any portion thereof in this Court and execution issued, unconstitutional and void insofar as they affect the right of the complainant to enforce such a judgment, as being contrary to Article I, Section 10 of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts.

X. In response to subdivisions C and D of the prayers of Count Four of the bill of complaint which pray that this Court enjoin and restrain defendant Municipal Finance Commission in the enforcement and execution of said statutes and that this Court permanently enjoin defendants Wilentz, Martin and Darby from functioning in the School District of the Borough of Runnemede, New Jersey,

[fols. 92-93] It is Ordered, Adjudged and Decreed that defendant Municipal Finance Commission be permanently enjoined and restrained from functioning in the Borough of Runnemede, New Jersey, to the extent that such functioning may be inconsistent with the right of the complainant to enforce in the manner herein stated executions to be issued in this Court upon judgments entered upon such school district bonds, but without prejudice to any of the powers and duties of the Municipal Finance Commission under the Municipal Finance Commission Act except as the stays therein contained affect the right of the complainant to enforce such a judgment.

It is further Ordered that no party shall have costs against any other party.

Dated June 6, 1938.

For the Court.

John Boyd Avis, United States District Judge.

On motion of Arthur T. Vanderbilt, Solicitor of Complainant.

The above decree is approved as to form.

Arthur T. Vanderbilt, Solicitor of Complainant. William A. Stevens, Solicitor of Defendants, Members of the Municipal Finance Commission of the State of New Jersey. S. Lewis Davis, Solicitor of Defendants Assessors and Tax Collector of the Borough of Runnemede.

[fol. 94] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL—Filed August 29, 1938

To the Honorable Judges of the United States District Court for the District of New Jersey:

Conceiving themselves aggrieved by the final decree and judgment of the United States District Court for — District of New Jersey, made and entered in the above entitled cause on the 6th day of June A. D. 1938, the defendants therein appeal from said judgment to the Supreme Court of the United States.

The said final decree is greatly to the prejudice and injury of your petitioners and is erroneous and inequitable.

The errors upon which your petitioners claim to be entitled to an appeal are more fully set out in the assignments of error and prayer for reversal, filed with the clerk pursuant to Rule 9 of the Rules of the United States Supreme [fol. 95] Court; and there has been likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States as provided by Rule 12 of the Rules of the United States Supreme Court.

Wherefore, in order that your petitioners may obtain relief in the premises and have opportunity to show the

errors complained of, your petitioners pray for the allowance of an appeal in said cause to the Supreme Court of the United States agreeably to the statutes and rules of said Court in such cases made and provided, and that a proper order touching the security required of the petitioners may be made.

Dated, August 24, 1938.

William A. Stevens, Solicitor for Petitioners, David T. Wilentz, J. H. Thayer Martin and Walter R. Darby, as and constituting the Municipal Finance Commission. S. Lewis Davis, Solicitor for Petitioners, Earl Kircher, Conrad Weber, William G. Hirsch and Albert W. Spencer.

[fol. 96] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENTS OF ERROR—Filed August 29, 1938

And Now on this 29th day of August, A. D., 1938, came the defendants by their solicitors, William A. Stevens and S. Lewis Davis, and say that the decree entered in the above cause on the 6th day of June, A. D., 1938, is erroneous and unjust to defendants, because:

1. The said Court erred in assuming jurisdiction of the suit.

2. The said Court erred in assuming jurisdiction of the suit, under Section 266 of the Judicial Code.

3. The said Court erred in ruling in effect that complainant properly grounded its bill's jurisdiction averments on Section 266 of the Judicial Code.

4. The said Court erred in ruling in effect that complain-
[fol. 97] ant was entitled to any relief, legal or equitable, under Section 266 of the Judicial Code.

5. The said Court erred in ruling in effect that complainant presented a proper cause of action, legal or equitable, for trial under Section 266 of the Judicial Code.

6. The said Court erred in permitting trial of the declaratory judgment action under Section 266 of the Judicial Code.

7. The said Court erred in granting any relief under Section 274-d of the Judicial Code.

8. The said Court erred in ruling in effect that complainant presented a proper cause of action, legal or equitable, for trial under Section 274-d of the Judicial Code.

9. The said Court erred in denying these defendants' motion to remit the suit for trial to a single judge of the United States District Court for the District of New Jersey.

10. The said Court erred in holding that any cause of action, legal or equitable, existed under the allegations of Count I of the bill of complaint.

11. The said Court erred in holding that the evidence introduced supported the demand for relief under Count I of the bill of complaint.

12. The said Court erred in not dismissing Count I of the bill of complaint.

13. The said Court erred in granting any of the prayers for relief under Count I of the said Bill of complaint.

14. The said Court erred in not dismissing Count II of the bill of complaint.

[fol. 98] 15. The said Court erred in holding that any cause of action, legal or equitable, existed under the allegations of Count III of the bill of complaint.

16. The said Court erred in holding that the evidence introduced supported the demand for relief under Count III of the bill of complaint.

17. The said Court erred in not dismissing Count III of the bill of complaint.

18. The said Court erred in granting any of the prayers for relief under Count III of the said bill of complaint.

19. The said Court erred in holding that any cause of action, legal or equitable, existed under the allegations of Count IV of the bill of complaint.

20. The said Court erred in holding that the evidence introduced supported the demand for relief under Count IV of the bill of complaint.

21. The said Court erred in not dismissing Count IV of the bill of complaint.

22. The said Court erred in granting any of the prayers for relief under Count IV of the bill of complaint.

23. The said Court erred in issuing any injunction or restraint against defendant Municipal Finance Commission, in answer to subdivision B of Count I of the bill of complaint.

24. The said Court erred in granting any relief in answer to subdivision B of the prayers of Count I of the bill of complaint.

25. The said Court erred in permanently enjoining and restraining defendant Municipal Finance Commission from functioning in the Borough of Runnemede, New Jersey, to [fol. 99] the extent that such functioning may be inconsistent with the right of complainant to enforce its execution in the manner stated in the Final Decree.

26. The said Court erred in permanently enjoining and restraining defendant Municipal Finance Commission from enforcing any stays contained in the Municipal Finance Commission Act in so far as the stays therein contained affect the right of complainant to enforce its judgment.

27. The said Court erred in failing to rule that the plaintiff had an adequate remedy at law to overcome any unconstitutional stays contained in the Municipal Finance Commission Act.

28. The said Court erred in failing to rule that the stays contained in the Municipal Finance Commission Act were constitutional.

29. The said Court erred in ruling, in answer to subdivision D of the prayers of Count I of the bill of complaint, that Chapter 330, Laws of New Jersey, 1933, and Chapters 195 and 258, Laws of New Jersey, 1935, as amended and supplemented, are unconstitutional and void.

30. The said Court erred in ruling, in answer to subdivision D of the prayers of Count I of the Bill of complaint, that Chapter 230, Laws of New Jersey, 1933, and Chapters 195 and 258, Laws of New Jersey, 1935, as amended and supplemented, are unconstitutional and void in so far as

they affect the right of the complainant to enforce its judgment obtained and entered in the United States District Court for the District of New Jersey.

31. The said Court erred in ruling, in answer to subdivision F of the prayers of Count I of the Bill of Complaint, that the enforcement of the complainant's judgment should [fol. 100] be in accordance with the laws existing in the State of New Jersey at the time of the issuance and sale of the bonds in question.

32. The said Court erred in ruling, in answer to subdivision F of the prayers of Count I of the bill of complaint, that the enforcement of complainant's judgment should be in accordance with and under the provisions of Section 35 of the Execution Act (2 Comp. Stats., p. 2256) and Section 237 of the School Law (4 Comp. Stats., p. 4804).

33. The said Court erred in ruling that Section 35 of the Execution Act (2 Comp. Stats., p. 2256) and Section 237 of the School Law (4 Comp. Stats., p. 4804) were not repealed by the provisions of the Tax Act of 1918.

34. The said Court erred in not denying subdivision D of the prayers under Count II of the bill of complaint completely and in their entirety.

35. The said Court erred in not denying subdivision E of the prayers of Count II of the bill of complaint completely and in their entirety.

36. The said Court erred in issuing any injunction or restraint against defendant Municipal Finance Commission in answer to subdivisions B, C, D, E and F of the prayers of Count III of the bill of complaint.

37. The said Court erred in granting any relief in answer to subdivisions B, C, D, E and F of the prayers of Count III of the bill of complaint.

38. The said Court erred in ruling in effect that acceptance of bonds in settlement of taxes may materially interfere with the complainant in the enforcement of its judgment.

39. The said Court erred in enjoining and restraining [fol. 101] defendants from making settlement for taxes due and owing to the Borough of Runnemede, New Jersey, by

any medium "except in accordance with the laws of the State of New Jersey".

40. The said Court erred in enjoining and restraining defendants from accepting bonds in settlement of taxes.

41. The said Court erred in granting any relief in answer to subdivision B of the prayers of Count IV of the bill of complaint.

42. The said Court erred in ruling that Sections 8 and 9 of Chapter 330, Laws of New Jersey, 1933, and Chapters 191, 195 and 258, Laws of New Jersey, 1935, all as amended and supplemented, are, as to school district bonds held by complainant issued prior to their enactment, as and when judgment may be entered thereon or on any portion thereof in the United States District Court for the District of New Jersey and execution issued, unconstitutional and void.

43. The said Court erred in ruling that Sections 8 and 9 of Chapter 330, Laws of New Jersey, 1933, and Chapters 191, 195 and 258, Laws of New Jersey, 1935, all as amended and supplemented, are, as to school district bonds held by complainant issued prior to their enactment, as and when judgment may be entered thereon or on any portion thereof in the United States District Court for the District of New Jersey, and execution issued, unconstitutional and void in so far as they affect the right of the complainant to enforce such a judgment.

44. The said Court erred in ruling that Sections 8 and 9 of Chapter 330, Laws of New Jersey, 1933, and Chapters 191, 195 and 258, Laws of New Jersey, 1935, all as amended and supplemented, are, as to school district bonds held by complainant issued prior to their enactment, as and when [fol. 102] judgment may be entered thereon or on any portion thereof in the United States District Court for the District of New Jersey, and execution issued, unconstitutional and void, as being contrary to Article I, Section 10 of the Constitution of the United States, which provides that no state shall pass any law impairing the obligation of contracts.

45. The said Court erred in granting any relief in answer to subdivisions C and D of the prayers of Count IV of the bill of complaint.

46. The said Court erred in issuing any permanent injunction or restraint against defendant Municipal Finance Commission in answer to subdivisions C and D of Count IV of the bill of complaint.

47. The said Court erred in anywise permanently enjoining and restraining defendant Municipal Finance Commission from functioning in the Borough of Runnemede, New Jersey.

48. The said Court erred in permanently enjoining and restraining defendant Municipal Finance Commission from functioning in the Borough of Runnemede, New Jersey, to the extent that such functioning "may be inconsistent with the right of the complainant to enforce in the manner herein stated executions to be issued in this Court upon judgments entered upon such school district bonds".

49. The said Court erred in ruling in effect in answer to subdivisions C and D of the prayers of Count IV of the bill of complaint that the stays contained in the Municipal Finance Commission Act affect the right of the complainant to enforce such a judgment.

50. The said Court erred in making said Final Decree granting said injunctions and restraints and in issuing said [fol. 103] Final Decree, in that it failed to recognize the laws of New Jersey as a matter of comity.

51. The said Court erred in making said Final Decree granting said injunctions and restraints and in issuing said Final Decree, in that it abused its discretion as to the making of said Final Decree and the issuing of said Final Decree, and made said Final Decree and issued said Final Decree arbitrarily and capriciously.

52. The said Court erred in failing to rule that the relators should be remitted to their remedies under the Municipal Finance Commission Act, i. e., Chapter 330 of the Laws of 1933 of the State of New Jersey, as amended and supplemented.

53. The said Court erred in granting an injunction under Section 266 of the Judicial Code against the acts of local municipal officers when there was no basis for an injunction against the acts of state officers.

54. The said Court erred in making said Final Order granting said Final Decree of injunction and restraint and

in issuing said Final Decree, in that it failed to recognize as a matter of comity the Municipal Finance Commission Act, i. e., Chapter 330 of the Laws of 1933 of the State of New Jersey, as amended and supplemented.

55. The said Court erred in making said Final Order granting said Final Decree of injunction and restraint and in issuing said Final Decree, in that it failed to follow the laws of the State of New Jersey as required by 28 U. S. C. A., Section 727, and Rule 40 of the General Rules of the District Court of the United States, District of New Jersey, adopted January 1, 1933, and effective as of that date.

[fol. 104] 56. The said Court erred in ruling that the complainant was entitled to a Final Decree of injunction and restraint as a matter of discretion.

57. The said Court erred in ruling that the complainant was entitled to a Final Decree of injunction and restraint as a matter of law.

58. The said Court erred in ruling that the complainant was entitled to a Final Decree of injunction and restraint as a matter of right.

59. The said Court erred in making the Final Decree in said suit, dated the 6th day of June, 1938.

60. The said Court erred in issuing the Final Decree in said suit, dated the 6th day of June, 1938.

61. The said Court erred in ruling in effect that the terms of the said Final Decree in said suit, dated the 6th day of June, 1938, are reasonable and just in the light of the evidence.

62. The said Court erred in failing to strike out all testimony relating to the question of relative values of bonds of New Jersey municipalities before and after 1932. Complainant's counsel on direct examination interrogated complainant's witness Morris Mather as follows:

"Q. Prior to the year 1932 were you buying and recommending New Jersey municipal bonds to your customers?
A. Yes, very actively.
Q. Are you doing so today?
A. No.
Q. Will you state why?"

Thereupon solicitor for your petitioners moved to strike out the question and obtain a ruling against the line of testimony on the ground that there was no issue under the plead-[fol. 105] ings before the Court upon which the question of relative values of the bonds of New Jersey municipalities before and after 1932 would be relevant. This motion was based on the contention that there was no cause of action for a declaratory judgment stated against the Municipal Finance Commission. After hearing argument the court below ruled as follows:

"Judge Davis: Well, gentlemen, we are in doubt about the relevancy of this testimony and one good rule is that when in doubt admit it. If we later come to the conclusion that it is not relevant and helpful we will disregard it. So we will admit the testimony and grant you an exception, Mr. Dimock."

63. The said Court erred in failing to strike out the answer of complainant's witness Morris Mather. On direct examination complainant's solicitor questioned the witness as follows:

"Q. Will you state why you are not now recommending New Jersey bonds to your customers?

A. Why they won't buy them.

* * * * * * *

Mr. Dimock: I move to strike out the answer on the ground that it is hearsay.

Judge Davis: We will overrule your motion and grant you an exception."

64. The said Court erred in failing to strike out the answer of complainant's witness Morris Mather. On direct examination complainant's solicitor questioned the witness as follows:

"Q. Why would you not buy New Jersey bonds?

A. We have had occasions to submit the transcripts of proceedings to several of our clients for examination——

Mr. Dimock: May I have the same exception to this?

Judge Davis: Yes.

A. —and these clients invariably are subject to their [fol. 106] attorneys approval of papers, and in the case of

many of our large buyers they will not approve of them as an investment for our clients."

65. The said Court erred in failing to strike out the answer of complainant's witness Morris Mather. On direct examination complainant's solicitor questioned the witness as follows:

"Q. And has the market for New Jersey bonds reflected the fact that large buyers would no longer buy New Jersey municipal bonds?

Mr. Dimock: I object on the ground that it calls for a conclusion.

Judge Davis: Overruled. Exception granted.

A. The market, I would say particularly in the middle west, has been seriously effected because you cannot sell New Jersey bonds out there any more."

This motion was directed to testimony by complainant's witness Morris Mather that the president of complainant had advised him that complainant would refuse to purchase New Jersey bonds as long as An Act concerning Municipal Finances was in existence.

66. The said Court erred in failing to strike out the answer of complainant's witness Morris Mather. On direct examination complainant's solicitor questioned the witness as follows:

"Mr. Grossman: I move to strike out all of the testimony of this witness for the reason that his testimony is not directed to any effect upon bonds of the school district of Runnemede which are involved in this suit by reason of the provisions of the Municipal Finance Commission Act.

Judge Davis: Motion overruled.

Mr. Grossman: I ask for an exception.

Judge Davis: Yes, you may have an exception."

The said motion immediately followed testimony by complainant's witness Morris Mather that he and his firm had [fol. 107] never dealt in any bonds of the Borough or School District of Runnemede, New Jersey.

67. The said Court erred in failing to strike out the answer of complainant's witness John E. Woodbridge. On

direct examination complainant's solicitor questioned the witness as follows:

"Mr. Dimock: May I renew my motion to strike out all of this testimony on the ground there is no probative value on the issue on which it is offered?

Judge Davis: Motion overruled. You may have an exception."

The said motion immediately followed the testimony given by complainant's witness John E. Woodbridge that he had compared the prices of certain New Jersey municipal bonds with the prices of certain other municipal bonds in cities comparable only on a basis of population and debt per capita.

Wherefore, the defendants pray that the said Decree be reversed and the United States District Court for the District of New Jersey be directed to dismiss the bill, and for such other lawful relief as may be just and equitable in the premises.

William A. Stevens, Solicitor for Petitioners, David T. Wilentz, J. H. Thayer Martin and Walter R. Darby, as and constituting the Municipal Finance Commission of the State of New Jersey. S. Lewis Davis, Solicitor for Petitioners, Earl Kircher, Conrad Weber, William G. Hirsch and Albert W. Spencer.

[fol. 108] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed August 29, 1938

The petition of David T. Wilentz, Attorney General of the State of New Jersey, J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, and Walter R. Darby, Commissioner of Municipal Accounts of the State of New Jersey, as and constituting the Municipal Finance Commission of the State of New Jersey, Earl Kircher, Conrad Weber and William G. Hirsch, members of the Board of Assessors of the Borough of Runnemede, New Jersey, and Albert W. Spencer, Tax Collector of the Borough of Runne-

mede, New Jersey, the defendants in the above entitled cause, for an appeal in the above entitled cause to the Supreme Court of the United States from the judgment of the District Court of the United States for the District of New Jersey, having been filed herein, accompanied by an assignment of errors and statement as to jurisdiction, all as provided by Rules 9 and 12 of the Rules of the United States Supreme Court, and the said papers having been presented to this court and the record in this cause having been considered;

It is hereby Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final decree of the District Court of the United States for the District of New Jersey, entered in this cause on 6th day [fol. 109] of June, 1938, and that the Clerk of the said District Court of the United States for the District of New Jersey shall, within 15 days from this date, make and transmit to the Supreme Court of the United States, under his hand and the seal of the Court, a true copy of the material parts of the record herein, which shall be designated by praecipe or a stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is further Ordered that the said appellant shall give a good and sufficient cost bond in the sum of 250.00 Dollars, conditioned as required by law.

Done by the Court this 29th day of August, 1938.

John Boyd Avis, District Judge.

[fols. 110-112] Citation, in usual form, showing service on Arthur T. Vanderbilt, omitted in printing.

[fol. 113] In United States District Court

[Title omitted]

Stipulation as to Facts—Filed October 29, 1936

Complainant and defendants stipulate the following as being true and agree upon the form of proof tendered, but the agreement as to facts and form of proof does not extend

to the admissibility of the facts over objections by the parties as to relevancy, etc., to-wit:

1. Complainant, Sovereign Camp of the Woodmen of the World, is now and at all times hereinafter mentioned, was a fraternal benefit life insurance association, organized and existing under and by virtue of the Laws of the State of Nebraska, with its main office and principal place of business in the City of Omaha, Nebraska, and said complainant is a citizen and resident of the State of Nebraska.

2. Defendant, David T. Wilentz, is Attorney General of the State of New Jersey; defendant J. H. Thayer Martin, is State Tax Commissioner of the State of New Jersey; defendant, Walter R. Darby, is Commissioner of Municipal Accounts of the State of New Jersey, and as such said defendants constitute the Municipal Finance Commission of the State of New Jersey, created by Chapter 340 of the Laws of 1931 of the State of New Jersey, as amended and supplemented. Defendants Earl Kircher, Conrad W[illegible] and William G. Hirsch were on January 1, 1936 and ever since and now are members of and constitute the Board of Assessors of the Borough of Runnemede, New Jersey; and defendant Albert W. Spencer, is Tax Collector of the Borough of Runnemede, New Jersey, and each of said defendants is a citizen and resident of the State of New Jersey and of the District of New Jersey.

3. This is a suit of a civil nature wholly between citizens of different states.

4. The matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of $3,000.00.

5. Prior to the 15th day of May, 1934, the Borough of Runnemede, a municipality of the State of New Jersey, had defaulted for over sixty days in the payment of the principal or interest of certain of its outstanding bonds or notes. The Borough Council of the Borough of Runnemede, pursuant to Chapter 340, Laws of New Jersey, 1931, as amended and supplemented (hereinafter referred to as the Municipal Finance Commission Act), petitioned the Honorable Frank Lloyd, a Justice of the Supreme Court of New Jersey, that the Municipal Finance Commission function in said municipality, a copy of the petition and resolution of the Borough Council will be supplied by Counsel for the Board of Assessors and Tax Collector and to be marked Exhibit 1, together with a financial statement and statement of tax collections

of the Borough, covering the period of 1926 to 1933, inclusive.

6. On the 15th day of May, 1934, after summary investigation, said Justice Frank Lloyd made and entered an order that said Borough of Runnemede, New Jersey, was unable to meet its obligations, which order, together with the petition, was filed in the office of the Clerk of the Supreme [fol. 114] Court of New Jersey. Copy of said order is hereto attached and marked Exhibit 2.

7. Thereupon said Municipal Finance Commission commenced to function in the said Borough of Runnemede, and has since been and now is functioning therein, and is also functioning in the School District of the Borough of Runnemede, New Jersey, which is co-terminous with the Borough of Runnemede.

8. The Board of Education of the Borough of Runnemede, on or about the 1st day of June, 1930, issued and sold $78,000 School Bonds, dated June 1, 1930, numbered consecutively from 1 to 78, inclusive, of the denomination of $1,000 each, and bearing interest at the rate of five and one-quarter per centum per annum, payable semi-annually on the first days of June and December of each year. Said bonds matured serially in numerical order $2,000 on June 1 in each of the years 1932 to 1937, inclusive, and $3,000 on June 1 in each of the years 1938 to 1959, inclusive. Said bonds were in coupon form, payable to bearer, and by the terms thereof said Board of Education of the Borough of Runnemede promised to pay the sum of One Thousand Dollars each on the maturity dates specified in each bond. A copy of one of said bonds is attached hereto and marked Exhibit 3. All other of said bonds are in like form and tenor, except as to numbers and maturity dates. Complainant purchased the entire issue of seventy-eight bonds. On June 1, 1932, bonds Nos. 1 and 2 were paid. Subsequently bonds Nos. 3 and 4, maturing June 1, 1933, bonds Nos. 5 and 6 maturing June 1, 1934 and bonds Nos. 7 and 8 maturing June 1, 1935, all became due and were not paid. Likewise, interest coupons attached to said $76,000 of unpaid bonds, which became due June 1, 1932, December 1, 1932, June 1, 1933, December 1, 1933, June 1, 1934, December 1, 1934, and June 1, 1935, were not paid at maturity. On or about July 12, 1935, complainant filed suit on defaulted bonds and coupons which matured prior to that date, (See Cause No. L-5224, entitled "Sove-

reign Camp, Woodmen of the World vs. Board of Education of the Borough of Runnemede") and judgment for $21,776.21 was made and entered in said cause on December 3, 1935.

9. A writ of execution was issued on said judgment on December 24, 1935, a copy of said writ, together with the return thereon, being attached hereto, marked Exhibit 4. Service of said writ was also made upon the Secretary of the Camden County Board of Taxation, Camden, New Jersey, and the Secretary of the Board of Tax Assessors of the Borough of Runnemede, in accordance with the return. On January 3, 1936, Arthur T. Vanderbilt, Solicitor for complainant, wrote letters to the Secretary of the Camden County Board of Taxation and the Secretary of the Board of Tax Assessors of the Borough of Runnemede, which were duly received by each of said officials, inquiring as to the action each Board would take with respect to the levying of taxes to pay the judgment of complainant, copies of which letters are hereto attached, marked Exhibit 5. The reply of the Secretary of the Camden County Board of Taxation is hereto attached, marked Exhibit 6, and the letter of W. S. Keown, County Counsel of Camden County, advising of the action of the County Board of Taxation upon the application of Solicitor for complainant, is hereto attached, marked Exhibit 7. No reply was ever received from the Board of Assessors of the Borough. On February 3, Henry M. Evans, Attorney for the Board of Education of the Borough of Runnemede, duly served a notice of motion upon Solicitor for complainant, for an order setting aside the execution, hereinabove referred to. A copy of said notice is hereto attached, marked Exhibit 8. Thereafter on, to-wit, the 6th day of February, Arthur T. Vanderbilt, Solicitor for complainant, wrote a letter to the Attorney for the Board of Education, inquiring the reason for the motion, copy of which is hereto attached and marked Exhibit 9. Thereafter on, to-wit, February 12, 1936, letters were written to Solici-
[fol. 115] tor for complainant by the Attorney for the Board of Education and Special Counsel to the Municipal Finance Commission withdrawing the notice of motion for an order setting aside the execution, copies of which letters are attached hereto and marked Exhibits 10 and 11.

10. Defendants William G. Hirsch, Conrad Weber and Earl Kircher, as and constituting the Board of Assessors, and Albert W. Spencer, Tax Collector, omitted to levy and

assess any tax in addition to the regular school budget taxes for the year 1936, or to collect any such taxes and if called to the stand would testify that one reason for such omission was because the Municipal Finance Commission was functioning in the municipality, and they expected to be informed what to do by the Municipal Finance Commission or the Borough Council, and that receiving no instructions from either source they spread the tax when the rate was received from the County Board without changing the rate as fixed by the County Tax Board. The members of the County Tax Board if called to the stand would testify that one reason why they did not add to the tax levy an additional amount to pay complainants' judgment was that the Board was advised by Special Counsel to the Municipal Finance Commission that litigation was then pending in the Federal District Court for the District of New Jersey, in which the question of the necessity for adding such additional amount to such levy, where the municipality concerned was operating under the protection of the Municipal Finance Commission Act as supplemented, had been raised, and the County Tax Board determined to await the outcome of such litigation before ordering the raising of such additional sum. Attached hereto are copies of letters of W. S. Keown, Camden County Counsel, to the Secretary of the Municipal Finance Commission (Exhibit 12) and the reply of the Commission's Special Counsel (Exhibit 13).

11. Submitted herewith, marked Exhibit 14, is a complete certified copy of all proceedings of the Municipal Finance Commission with respect to the Borough of Runnemede, to which reference is made for the action of the Municipal Finance Commission, with respect to the 1936 budgets of the Borough of Runnemede, and School District of the Borough of Runnemede. On April 24, 1936, the County Tax Board of Camden County struck the tax rate for the Borough. No action has ever been taken by the Borough Council of the Borough of Runnemede, with respect to the budget certified by the Municipal Finance Commission on February 28th to the County Tax Board.

12. Complainant's judgment was ordered on December 2, 1935; made and entered on December 5, 1935. Execution was issued thereon December 24, 1935; returned January 3, 1936, and complainant filed a petition for a writ of mandamus February 14, 1936 against the Board of Education of the Borough of Runnemede, individual members of the

Board and the individual members of the Board of Assessors of the Borough of Runnemede and the Tax Collector of the Borough, seeking to compel the assessment, levy and collection of taxes for the payment of complainant's judgment. Proofs were duly taken on said petition, briefs filed, and the matter is still undecided. Since May 15, 1936 the Tax Collector is and has been collecting taxes on the basis of the Borough budget certified to the County Tax Board as hereinbefore stipulated, and the school budget adopted by the Board of Education and voters and approved by the Municipal Finance Commission, as hereinbefore stipulated.

13. Complainant is still the owner and holder of the bonds hereinbefore described in paragraph 8 except insofar as the same may have been merged in the judgment hereinbefore referred to, and will continue to hold and own the bonds until the final hearing of this cause. Said bonds contain no provision for acceleration of principal upon default in payment of interest, or upon default in payment of other bonds of the issue.

[fol. 116] 14. The Board of Education of the Borough of Runnemede, New Jersey, has been in default in the payment of principal and interest on its bonds since on or about June 1, 1931.

15. Complainant owns no property in the Borough of Runnemede, New Jersey.

16. There is no high school within the district and the district is forced to pay tuition for students of high school age on a per pupil basis. There has been an increase in the number of students of high school age. The following is a table of the amounts budgeted and paid for tuition for such students for the past six years:

Tuition Costs—Runnemede

	1931–1932	1932–1933	1933–1934	1934–1935	1935–1936	1936–19
Sum Bugeted	$8,425.00	$11,860.00	$16,120.00	$11,580.00	$20,000.00	$19,000
Children	57	90	110	125	145	**
Contract Figure	7,495.50	11,752.75	8,586.25	14,900.00	16,613.30	**
Paid by end of Year*	unknown	3,820.25	3,300.75	12,718.29	16,613.30	**
Owed at end of Year	unknown	7,932.50	5,285.50	2,181.71	0.00	**

* In each instance the sum due at the close of the school year must be paid off during the next year, as otherwise the accepting school will not receive the children for education. The Runnemede children are sent to Audubon. The tuition rate there has not varied remarkably, and no better bargain can be obtained elsewhere.

** Not yet known.

17. The transactions referred to in count 3 of the complaint with respect to the compromise of taxes by payment thereof in bond were fully consummated in accordance with the terms of the resolutions authorizing the same. No taxes were so compromised except in cases where transactions were pending October 11, 1935, at which time the Municipal Finance Commission, by special resolution, discontinued the practice. There are no more bond compromises which were pending on October 11, 1936, in Runnemede. A copy of said resolution is attached to the complaint and marked Exhibit E.

18. The Borough has a contract with the New Jersey Water Company for a refund of $56 for each tap-in on water mains of the company laid at the expense of the Borough, and there has been no audit by the Municipal Finance Commission of the amount due to the municipality from the water company for such tap-ins. In January 1936 a voluntary payment was made by the water company of $1,239.36, but no attempt has been made by the Municipal Finance Commission to determine whether or not this is the total amount due from the company. The amount due the municipality from the water company has been audited for the municipality by its auditor who is the same person who acts as auditor for the Municipal Finance Commission, and the Tax Collector of the municipality has verified the correctness of the payment of $1,239.36 by an examination of the books of the water company.

19. The Commission has taken no steps to obtain State aid on lighting of State highways through the Borough, which at the present time costs the Borough approximately $2,200.00 annually. The State Highway Commission has no specific appropriation for 1936 and while other municipalities have made application for such state aid for 1936 no such applications have been granted.

20. The Commission has made no investigation to determine whether or not the cost to the Borough of rentals on fire hydrants are equitable and in accordance with the rentals charged neighboring municipalities. The hydrant rentals are fixed under rates set by the New Jersey Public Utilities Commission. They may be reviewed only by appeal before that commission.

21. It is further stipulated, subject to objection, as stated hereinabove, that the following material is incorporated in and made part of the record:

(a) The record, testimony, and exhibits hitherto submitted to the United States District Court for the District [fol. 117] of New Jersey in an action at law, Barker v. North Bergen, L 4864;

(b) The record, testimony, and exhibits hitherto submitted to the United States District Court for the District of New Jersey in a suit in equity, Barker v. North Bergen, E 5025;

(c) The record, testimony, and exhibits hitherto submitted to the United States District Court for the District of New Jersey in mandamus proceedings, United States ex rel. Christmas v. Asbury Park, L 4851;

(d) The record, testimony, and exhibits hitherto submitted to the United States District Court for the District of New Jersey in mandamus proceedings, United States ex rel. Woodmen of the World v. Runnemede, L 5224;

(e) The record, testimony, and exhibits hitherto submitted to the United States District Court for the District of New Jersey in mandamus proceedings, United States ex rel. Norfolk & Western Rwy. v. Township of Chester, L 5013;

(f) The minutes of the Municipal Finance Commission's activities in all municipalities wherein it is functioning, to wit: Asbury Park, Avalon, Brigantine, Chester, Delaware, Fort Lee, Lavellette, Manville, Mount Ephraim, North Bergen, Runnemede and South Hackensack (formerly Lodi Township), copies of which are submitted herewith and marked Exhibits 15-a to 15-l, inclusive;

(g) Certain financial records as to the twelve municipalities in which the Municipal Finance Commission is functioning, together with similar statements as to the municipalities of Lakewood, Moonachie, Neptune City, West New York, and Woodbridge, copies of all of which are submitted herewith and marked Exhibits 16-a to 16-, inclusive;

(h) Statements of cash on hand in current and trust accounts and statements of certain liabilities of the seventeen

above named municipalities, copies of which are submitted herewith and marked Exhibits 17 and 18-a to 18-q inclusive.

22. The facts as stated in the affidavit of John B. Dawson, dated June 8, 1936, are deemed to be before the court on this application for an interlocutory injunction, but, except as said facts are included in the facts and exhibits as agreed to in the foregoing stipulation, said facts are not presented to the court on final hearing.

23. The Complainant on the one hand contends that Sections 8 and 9 of Chapter 330, Laws of 1933, and companion acts are unconstitutional, and on the other hand it is contended by the defendant, Municipal Finance Commission, that said Sections and said Acts are constitutional.

Arthur T. Vanderbilt, Solicitor for Complainant. William A. Stevens, Solicitor for Defendants Wilentz et al. Joseph Varbalow, Solicitor for Defendants Hirsch et al.

[fol. 118] EXHIBIT 2 TO STIPULATION

NEW JERSEY SUPREME COURT, CAMDEN COUNTY

In the Matter of the Petition of THE BOROUGH OF RUNNEMEDE for Supervision of Its Affairs by the Municipal Finance Commission of the State of New Jersey, Pursuant to the Provisions of P. L. 1931, Chapter 340, as Amended by P. L. 1933, Chapter 330

On Petition, etc.

ORDER

This matter being opened to the Court by petition which was previously presented to this Court on behalf of the Borough of Runnemede on or about the 7th day of May, 1934, and a rule to show cause having been issued pursuant to the statutes, returnable on this day before the undersigned; and pursuant to the direction of the statute a summary investigation into the facts having been made, and it having been established to my satisfaction from the testimony, under oath, of Wilson A. Boyd, one of the members

of the Borough Council of the Borough of Runnemede and Chairman of the Finance Committee of said Borough, that the Borough of Runnemede at the present time is in default on interest on Borough obligations, which is past due in the sum of $31,252.50; that there is principal of borough bonds past due and in default in the sum of $173,000; that the Borough of Runnemede owes a total of $20,414.30, covering 1932 and 1933 State and County Taxes, which at present are past due and unpaid; and that the Borough of Runnemede owes to the Board of Education of the Borough of Runnemede the sum of $60,256.39, representing the 1933 and 1934 school levy, which sum should have been collected with the 1933 taxes of the Borough of Runnemede and is past due, making a total of obligations past due of $284,923.19; and

It further appearing, from the testimony of Wilson A. Boyd, as aforesaid, that the Borough of Runnemede has on hand to meet said obligations the sum of $2,021.90 in its current account the sum of $2,054.20 in its delinquent tax account including cash and scrip; the sum of $10,587.46 in its tax title lien account; the sum of $44.55 in its dog trust account, said funds being held to meet dog damage claims and which are available only for that purpose; the sum of $275.00 in its coupon account, representing coupons on bonds, past due, which have not yet been surrendered, and the sum of $31,077.12 in its trust saving account, representing principal of sidewalk assessments collected by the Borough, applicable to the payment of principal of its assessment bonds now outstanding and in default, or a total of $46,060.23; and

It further appearing that the Borough of Runnemede has outstanding delinquent taxes up to and including the year 1933, due and unpaid, in the sum of $69,452.11, and in addition thereto holds tax title and assessment liens in the sum of $275,104.40, of which approximately sixty (60%) per centum represents liens against unimproved land; and

It further appearing, from the above testimony, that the Borough of Runnemede is not in a position to meet its obligations when due, in spite of the endeavors of its duly constituted officers, and the said Borough of Runnemede having therefore petitioned this Court to have the Municipal Finance Commission of the State of New Jersey function in said municipality;

It is, therefore, on this 14th day of May, 1934, ordered and decreed that the Borough of Runnemede, a municipal corporation in the County of Camden and State of New [fol. 119] Jersey, is unable to meet its obligations when due despite the endeavors of its properly constituted officers; and

It is further ordered that by reason thereof, the Municipal Finance Commission of the State of New Jersey, pursuant to the statute, is hereby authorized and instructed to function in the said Borough of Runnemede, with all powers and duties conferred by the statute hereinabove referred to; and

It is further ordered that a copy of this order, together with the petition and rule to show cause upon which this order is based, shall be filed in the Office of the Clerk of the New Jersey Supreme Court; and

It is further ordered that a copy of this order, which need not be certified, be served upon the members of the Municipal Finance Commission of the State of New Jersey, within five days from the date hereof.

(Signed) Frank T. Lloyd, Justice, New Jersey Supreme Court.

Entered May 15, 1934.

On Motion of George D. Rothermel.
A true copy. Fred L. Bloodgood, Clerk.

EXHIBIT 3 TO STIPULATION

Number 3. Dollars $1000.

UNITED STATES OF AMERICA,
State of New Jersey,
County of Camden:

School District of the Borough of Runnemede

School Bond

Know All Men by these Presents, that the Board of Education of the Borough of Runnemede, in the County of Camden and State of New Jersey, hereby acknowledges itself indebted and promises to pay to the bearer, or if this

bond be registered, to the registered holder One Thousand Dollars on the first day of June, 1933, with interest thereon at the rate of five and one-quarter per centum (5¼%) per annum, payable semi-annually on the first day of June and the first day of December in each year, upon presentation and surrender of the annexed interest coupons as they severally become due. Both principal and interest of this bond shall be payable in gold coin of the United States of America, of or equal to the present standard of weight and fineness, at the Suburban Commercial Bank of Barrington, N. J. or at the option of the holder at the First National Bank, of Philadelphia, Pa. This bond may be registered either as to principal or as to principal and interest, in accordance with the provisions endorsed thereon.

This bond is one of a series of bonds, of like date, amount and tenor, except as to maturity, consisting of seventy-eight bonds, issued for the purpose of erecting on a plot now owned by the District a new schoolhouse of fire-proof construction, and to purchase for the said schoolhouse the school furniture and other necessary equipment, pursuant [fol. 120] to the affirmative vote of a majority of the legal voters of said District at meetings thereof duly called and held on the 2d day of April, 1927 and on the 7th day of May, 1927, said bonds being issued pursuant to an Act of the Legislature of the State of New Jersey, entitled, "An Act to establish a thorough and efficient system of free public schools, and to provide for the maintenance, support and management thereof," approved October 19, 1903, being Chapter I of the Laws of the Second Special Session of 1903, and the acts amendatory thereof and supplemental thereto, and a resolution of the Board of Education duly adopted.

It is hereby certified and recited that each and every act, condition and thing required to be done, to have happened and to be performed, precedent to and in the issuance of this bond, has been done, has happened and has been performed in full and strict compliance with the Constitution and Laws of the State of New Jersey, and that the issue of bonds of which this is one is not in excess of any Constitutional or Statutory limitation of indebtedness.

In witness whereof, the Board of Education of the Borough of Runnemede, in the County of Camden and State of New Jersey, has caused this bond to be signed by its

President and attested by the District Clerk, and the seal of the said District to be hereunto affixed and the interest coupons hereto attached to be executed with the fac simile signature of the said District Clerk as of the first day of June, 1930.

Fred C. Sweesy, President.

Attest: Thomas L. Coley, District Clerk.

EXHIBIT 4 TO STIPULATION

DISTRICT COURT OF THE UNITED STATES OF AMERICA, DISTRICT OF NEW JERSEY

The President of the United States of America to the Marshal of the District of New Jersey, Greeting:

Law—5224

We command you, that of the goods and chattels rights and credits of Board of Education of the Borough of Runnemede in the County of Camden, defendant, in your District, you cause to be made the sum of Twenty-one thousand eight hundred one dollars and twenty-one cents which to Sovereign Camp, Woodmen of the World, plaintiff, lately in the District Court of the United States, in and for the District of New Jersey, in the Third Circuit, at Trenton, before the judges of said court, was adjudged for its damages, costs, and charges, whereof the said defendant was convicted, as appears of record, and if sufficient goods and chattels rights and credits of the said defendant cannot be found in your district, whereof the damages, costs, and charges aforesaid may be made, then we further command you that you cause the whole or the residue, as the case may require, of the said damages, costs, and charges to be made of the lands, tenements, and real estate whereof the said defendant was seized on the 5th day of December, nineteen hundred and thirty-five or at any time afterwards, in whose hands soever the same may be, and that you have that money before the said judges, at Trenton aforesaid, on the 24th day of March 1936 next, to render unto the said plaintiff for its damages, costs, and charges aforesaid, and have you then and there this writ.

[fol. 121] Witness the Honorable William Clark, Judge of the District Court of the United States, for the District of New Jersey, at Trenton aforesaid, this 24th day of December nineteen hundred and thirty-five.

George T. Cranmer, Clerk, United States District Court, District of New Jersey; Kathryn M. Flynn, Deputy Clerk. (L. S.)

Recorded in the Clerk's Office of the District Court of the United States, for the District of New Jersey, in Book I of Executions, page 192.

George T. Cranmer, Clerk, U. S. District Court, by Kathryn M. Flynn, Deputy Clerk.

Served the within FI. Fa. de Bonis et Terris by delivering to and leaving with Gardner S. Driver, Secretary of Camden County Board of Taxation, personally, a copy thereof, at Camden and by delivering to and leaving with Albert W. Spencer, Tax Collector for Borough of Runnemede, personally, a copy thereof, at Runnemede and by delivering to and leaving with William G. Hirsch, Tax Assessor for Borough of Runnemede, personally, a copy thereof, at Runnemede, each in the District of New Jersey, on the 2nd day of January, 1936, at the same time showing said persons this original with the seal of the Court attached and informing them of its contents.

William P. McDermitt, United States Marshal, by Arthur L. Stretton, Deputy.

At request of attorneys, the within writ is herewith returned "Nulla Bona" this 3rd day of January, A. D. 1936, at Trenton, New Jersey.

William P. McDermitt, United States Marshal, (Signature illegible), Chief Deputy.

[Endorsement:] United States District Court, District of New Jersey. Sovereign Camp, Woodmen of the World, Plaintiff, vs. Board of Education of the Borough of Runnemede in the County of Camden, Defendant. Fi. Fa. De Bonis et Terris. Returnable March 24, 1936. Arthur T. Vanderbilt, Esq., 790 Broad Street, Newark, N. J.

Levy:

Damages	$21,776.21
Costs	25.00
Interest thereon from Dec. 5, 1935	109.01
Besides Marshal's Execution fees	6.00

[fol. 122] EXHIBIT 5 TO STIPULATION

Arthur T. Vanderbilt, Counsellor at Law,
744 Broad St., Newark, N. J.

January 3, 1936.

Conwood Weber, Esq., Secretary, Board of Tax Assessments, Clements Bridge Road, Runnemede, New Jersey.

Re Sovereign Camp, Woodmen of the World v. Board of Education of the Borough of Runnemede

DEAR SIR:

I am informed by the United States Marshal that William G. Hirsch, one of the members of your Board of Assessors, was served yesterday by the Marshal with a writ of execution issued out of the United States District Court for the District of New Jersey in the above case, wherein plaintiff, whom I represent, obtained a judgment against the Board of Education of the Borough of Runnemede on defaulted bonds and interest coupons issued by it in the amount of $21,801.21. I am writing at this time to inquire whether your Board of Assessors, pursuant to Section 35 of the New Jersey Execution Act (2 Compiled Statutes 2256) will assess and levy, in addition to the regular taxes for the coming year, the amount due upon said execution plus interest thereon as is required by said statute after writ of execution has been served upon you. Will you kindly let me know by return mail whether you intend to comply with the statute in this respect. I enclose a self-addressed, stamped envelope for your convenience.

Very truly yours, Arthur T. Vanderbilt.

EXHIBIT 5

Arthur T. Vanderbilt, Counsellor at Law,
744 Broad St., Newark, N. J.

January 3, 1936.

Gardner S. Driver, Esq., Secretary, Camden County Board of Taxation, Court House, Camden, New Jersey.

Re Sovereign Camp, Woodmen of the World v. Board of Education of the Borough of Runnemede

DEAR SIR:

I am informed by the United States Marshal that he served you yesterday with a writ of execution issued out of

the United States District Court for the District of New Jersey in the above case, wherein the plaintiff, whom I represent, obtained a judgment against the Board of Education of the Borough of Runnemede in the amount of $21,801.21 on defaulted bonds and interest coupons. I am writing you at this time to inquire whether the Camden County Board of Taxation will, pursuant to Section 505 of P. L. 1918, Chap. 236, add the amount due upon said execution with interest to the amount certified to it to be raised by taxation in the taxing district of the Borough of Runnemede and whether you intend to comply with the requirements of the above statute. Will you kindly let me know by return mail. I enclose a self-addressed, stamped envelope for your convenience.

Very truly yours, Arthur T. Vanderbilt.

[fol. 123] EXHIBIT 6 TO STIPULATION

Offices of the Camden County Board of Taxation.
Court House, Camden, N. J.

January 6, 1936.

Arthur T. Vanderbilt, Esq., 790 Broad Street, Newark, New Jersey.

Re Sovereign Camp, Woodmen of the World v. Board of Education of the Boro of Runnemede

DEAR SIR:

This will acknowledge receipt of your letter of January 3rd inquiring whether the Camden County Board of Taxation will add the amount due upon your execution with interest to the amount certified to this Board by the Taxing District of the Borough of Runnemede.

This matter will be presented to the Board for their consideration and will no doubt be referred by them to the County Solicitor for his advice. When the matter is definitely decided I shall be glad to advise you as to the Board's decision.

Very truly yours, Gardner S. Driver, Secretary.

GSD:CL.

EXHIBIT 7 TO STIPULATION

County of Camden, New Jersey

February 24th, 1936.

Arthur T. Vanderbilt, Esq., 790 Broad St., Newark, N. J.

Re Sovereign Camp, Woodmen of the World v. Board of Education of the Borough of Runnemede

MY DEAR MR. VANDERBILT:

You have had some correspondence with the County Board of Taxation concerning an execution issued from the United States District Court in the above case. It is my understanding that this execution was returned nulla bona and there is now pending a mandamus proceeding in the United States District Court before Judge Avis. You wrote to the County Board of Taxation asking whether they would add this amount to the budget of the Runnemede School Board.

I am requested to advise you that they will not do this until a mandamus proceeding has been issued.

I would appreciate it if you would keep me in touch with the situation respecting this mandamus so that I can advise the County Board of Taxation as to their future action.

Very truly yours, W. S. Keown.

GDR:LLB.

[fol. 124] EXHIBIT 12 TO STIPULATION

County of Camden, New Jersey

February 8th, 1936.

Walter S. Keown, County Counsel, West Jersey Trust Building, Broadway & Cooper Street, Camden, New Jersey.

Mr. George C. Skillman, Secretary of the Municipal Finance Commission, State House, Trenton, N. J.

In re Camden County General

MY DEAR MR. SKILLMAN:

I enclose herewith copy of a letter that was sent by Arthur T. Vanderbilt, Esq., to the Camden County Board

of Taxation. You will note that this refers to a judg
against the Board of Education of the Borough of R
mede and of course this borough is now under your s
vision.

I wish to lend you every assistance that I can in
connection and no doubt you are aware of this proble
have not yet been formally asked for an opinion fro
Camden County Board of Taxation, but am anticip
that I will be asked for this. I should be glad to
your views on this matter at your convenience.

Very truly yours, (Signed) Walter S. Ke

GDR:LLB.

[fol. 125] In United States District Court. Distric
New Jersey

Soverign Camp, Woodmen of the World, Complai
Respondent,

vs.

David T. Wilentz, Attorney General of the State of
Jersey; J. H. Thayer Martin, State Tax Commission
the State of New Jersey, and Walter R. Darby, Con
sioner of Municipal Accounts of the State of New Je
as and Constituting the Municipal Finance Commi
of the State of New Jersey; Earl Kircher, Conrad W
and William G. Hirsch, Members of the Board of A
sors of the Borough of Runnemede, New Jersey.
Albert W. Spencer, Tax Collector of the Borou
Runnemede, New Jersey, Defendants-Appellants

Narrative Statement of Evidence—Filed October 27,

Transcript of proceedings taken at Trenton, New Je
October 29, 1936, before Hon. J. Warren Davis, Hon.
Boyd Avis and Hon. Phillip Forman.

Appearances

Arthur T. Vanderbilt, Esq., Thompson, Wood & Hoff
Esqs. by David M. Wood, Esq., F. W. Hall, Esq. for
plainant.

William A. Stevens, Esq., Edward Dimock, Esq., Jo
Varbalow, Esq., Harry Grossman, Esq. for defendants

MORRIS MATHER, being called and sworn as a witness in behalf of the complainant, testified as follows:

On direct examination.

By Mr. Wood:

I reside in Chicago, Illinois. I have been an investment banker, specializing in municipal bonds, for over 25 years. I have, during that time, bought and sold many issues of bonds of New Jersey municipalities and am entirely familiar with the general market conditions affecting New Jersey municipal bonds. Prior to the year 1932 I was [fol. 126] actively buying and recommending New Jersey municipal bonds to my customers.

"Q. Are you doing so today?

A. No.

Q. Will you state why?

Mr. Dimock: I move to strike out the question and obtain a ruling against this line of testimony on the ground that there is no issue under the pleadings before the court upon which the question of the relative values of the bonds of New Jersey municipalities before and after 1932 would be relevant. And the reason I say that is that there is no cause of action for an injunction or for a declaratory judgment stated against the Municipal Finance Commission."

"Mr. Wood: We are asking to bring out this testimony for two purposes. We ask for the removal of a cloud on our securities, and we are also asking for a declaratory judgment. So far as the cloud is concerned we must first demonstrate there is a cloud for the court to remove."

"Judge Davis: Well, gentlemen, we are in doubt about the relevancy of this testimony and one good rule is that when in doubt admit it. If we later come to the conclusion that it is not relevant and helpful we will disregard it. So we will admit the testimony and grant you an exception, Mr. Dimock. Proceed.

Q. Will you state why you are not now recommending New Jersey bonds to your customers?

[fol. 127] A. Why they won't buy them.

Mr. Wood: I cannot think of any better reason.

Mr. Dimock: I move to strike out the answer on the ground that it is hearsay.

Judge Davis: We will overrule your motion and gra
you an exception."

I am not buying New Jersey bonds for my own inve
ment. I do not buy many bonds for my own investment.
I were I would not buy New Jersey bonds.

"Q. Why would you not buy New Jersey bonds?
A. We have had occasions to submit the transcripts
proceedings to several of our clients for examination——

Mr. Dimock: May I have the same exception to this?
Judge Davis: Yes.

A. —and these clients invariably are subject to the
attorneys approval of papers, and in the case of many
our large buyers they will not approve of them as an i
vestment for our clients."

These same persons were not taking that attitude pri
to 1932; we sold lots of bonds, lots of them; the records w
show that.

"Q. And has the market for New Jersey bonds reflecte
the fact that large buyers would no longer buy New Jers
municipal bonds?

Mr. Dimock: I object on the ground that it calls for
conclusion.
Judge Davis: Overruled. Exception granted.

[fol. 128] A. The market, I would say particularly in t
middle west, has been seriously effected because you ca
not sell New Jersey bonds out there any more."

The reasons for it are the same. The people object
the law of the state. I am sorry I did not say that befor
The loss of customers I had in mind includes large ban
and insurance companies in the Chicago area—our busine
is almost entirely confined to insurance companies, fratern
organizations and banks. We do very little business wi
individuals. We have liquidated millions of New Jers
municipal bonds for our customers.

On cross-examination by Mr. Dimock the witness testifi
further as follows:

I do not know what provisions of the New Jersey law
these customers objected to. I am not an attorney.

am a bond man. If the attorneys raised the objection, as far as I am concerned, it is finished. They do not give us the details. They do not have to. The attorneys who said they could not approve New Jersey bonds were Mr. Wells, Woodmen of the World, a very prominent example, and Mr. Bradshaw of the same concern. I do not know whether they are both attorneys for the plaintiff in this case. I am not familiar with the plaintiff in this case and know nothing about it.

I cannot recall the exact date when a customer told me that his attorney would not approve of New Jersey bonds. We have just stopped dealing in New Jersey bonds except in cases where * * * A customer told me that his attorney would not approve of the bonds sometime in the last two years. Sometime since the passage of this new [fol. 129] act, whenever it was. I am not familiar with the terms of it.

I never made any inquiry myself to determine what it was that was the matter with these bonds. We are in business to sell bonds. We sell the ones that can be sold. It makes a lot of difference whether the bonds are good or bad, even if they can be sold, because if the attorney does not approve of them we never take them up. We are concerned with the security behind the bonds and the financial condition of the municipality issuing the bonds, their debt, and what the rate of tax is, and the legal question goes to our lawyers, and we are guided by our lawyers as to whether or not we will accept them.

We do not deal in New Jersey bonds as originators today. We do not bid for them direct. We act as liquidators for these insurance companies which desire to get out of their holdings. Do I think there is any difference in New Jersey bonds? There is a lot of difference, of course. We have sold several millions of New Jersey bonds at considerable sacrifice to our clients. We sell them back in New Jersey. They know they are good. There is a market in New Jersey. I assume they know they are good, otherwise they would not buy them.

I have not particularly noticed whether the market makes any difference between municipal bonds issued in New Jersey prior to the passage of the Municipal Finance Act and those issued afterward. We would not bid for an issue of New Jersey bonds issued under the Municipal Finance Act. We do make a distinction between the bonds

issued before the Municipal Finance Act and those issued afterward. We are not bidding on any New Jersey bonds. We are no longer dealing in New Jersey bonds except as accommodation to our customers. We first refused to [fol. 130] sell New Jersey bonds because our clients would not buy them.

We have no reason to go to lawyers. I have never had occasion to ask for the advice of lawyers as to why these bonds are disadvantageous merchandise. There is some controversy about the enforceability of the bonds, I understand, a question whether the bonds are enforceable. I said millions of bonds. I did not say I sold them when I thought there was a doubt about their enforceability. I said my clients were selling their New Jersey holdings. I do not know anything about whether there is doubt as to the enforceability of bonds issued before the Municipal Finance Act. I would not call it a nebulous feeling in the air against New Jersey bonds when you have nine or ten of the largest insurance companies of the west tell you they will not buy them. I have no reason to look for what the basis of it is. I have had Mr. Bradshaw, the president of the Woodmen of the World, which is probably the largest fraternal insurance company in the United States and one of the largest buyers of municipal bonds, tell me that he would never buy another New Jersey bond as long as that act was in existence. I did not ask him why. That was sufficient enough for me. He is a lawyer.

"Mr. Dimock: If your Honor please, I feel that this testimony is so remote and speculative that it should be stricken from the record, and I ask that it be so stricken.

Judge Davis: The motion is denied. You may have an exception."

[fol. 131] On cross-examination by Mr. Grossman the witness testified further as follows:

It is a very hard matter to estimate the amount of millions of New Jersey bonds my concern has sold since 1931. I cannot tell off-hand. We do a large business in municipal bonds. That is all we sell. Not as much as one hundred million. I would not say fifty million. Our business runs between fifteen and twenty million dollars worth of bonds a year. But understand these bonds we have sold are for the purpose of liquidation and not new stuff. Our business

principally is with banks, insurance companies and fraternal orders. These bonds came from them. We sold them to dealers back here in the East. There must be a market for the bonds. We sold them.

I do not know whether the objections that were raised and brought to my attention as to New Jersey bonds have reference to bonds only of municipalities under the jurisdiction of the Municipal Finance Commission, or obtained as to bonds issued by any municipality in New Jersey. I think the customers were selling the bonds because they did not like the New Jersey laws. We did not go into the specific case of each municipality. The insurance company decides they want to liquidate their New Jersey holdings and they liquidate them if they can. In my bond transactions I handled bonds of the state of New Jersey.

I am able to give you some up-to-date information as to the purchase of New Jersey bonds issued by the state of New Jersey. Last week we offered a block of State of New Jersey bonds of the type which goes principally to trust departments of banks. Naturally we offered the banks [fol. 132] first. We were liquidating these bonds for the Woodmen of the World, and without exception the Chicago banks said "Nothing in New Jersey."

There is an objection to bonds issued by counties in the state of New Jersey as well as municipalities—there is an objection to all New Jersey bonds in our market. No matter who issues them. The question is not whether the objection is not so much to the operations under the Municipal Finance Commission act as it is to bonds issued in New Jersey because the question of the soundness of the state of New Jersey is involved. I think that the situation was brought about by the objection to the recent laws passed by the State of New Jersey. I really believe that.

I do not understand the nature of those laws. I am not a lawyer. I am in the bond business. When I recommend a bond I am concerned with the ability to pay. My decision concerning the law would depend upon what the recognized bond attorneys told me. We have never submitted a New Jersey transcript to any New Jersey attorney since the passage of the New Jersey Municipal Finance Commission Act I have never submitted a transcript, and therefore was never advised whether or not municipalities under the jurisdiction of the Municipal Finance Commission would be hampered in the observation of the obligations

of their bonds by the terms of the Municipal Finance Commission Act. If I did not submit the transcript they could not have told me yes or no.

I have sold bonds since 1931. I have not bought New Jersey bonds direct from the State since 1931. We bought and sold New Jersey bonds in 1932. I will have to look at my records to know whether I bought or sold New Jersey [fol. 133] bonds in 1933. I am not quite sure whether I bought and sold New Jersey bonds in 1932. I do not traffic in bonds and I do not remember what municipal bonds I bought or sold in 1932. I dealt in them. I do not recall. I am quite sure I did not buy any Runnemede bonds. I do not think I ever dealt in any Runnemede bonds. I know nothing about the bonds of the school district of the Borough of Runnemede.

"Mr. Grossman: I move to strike out all of the testimony of this witness for the reason that his testimony is not directed to any effect upon bonds of the school district of Runnemede which are involved in this suit by reason of the provisions of the Municipal Finance Commission Act.

Judge Davis: Motion overruled.

Mr. Grossman: I ask for an exception.

Judge Davis: Yes, you may have an exception."

FREDERICK L. SATTLEY, being called and sworn as a witness in behalf of the complainant, testified as follows:

Under direct examination.

By Mr. Wood:

I live in Detroit, Michigan. I am in the investment counsel business. I have been in it since 1930, and prior to that time I had been the business of selling bonds. During that period I engaged practically exclusively in the buying and selling of municipal bonds. In my business as an investment counsel, I advise investors as to investments in municipal bonds. We have as a matter of fact about eighty-five banks in the State of Michigan to whom we make recommendations for the purchase of various securities. We have bought considerable amounts of municipal bonds for [fol. 134] them; however, in recent months not exceeding five year maturities. We do advise one small insurance company.

I would know of no reason why prior to the year 1933 our customers should not purchase the better credits of municipal bonds of the State of New Jersey. I did not personally recommend the purchase of any New Jersey municipal bonds at that time. I was not with this firm at that time, but I would have if I had been there. No, that is not my attitude today. I have purchased today State of New Jersey bonds not exceeding five year maturities. That is no reflection upon the State's credit, but we feel that marketwise we should confine ourselves there for bank investments, and my reason for purchasing those and not purchasing bonds of municipalities is due to this law, and it is not due to any interpretation of mine of the law. I am not a lawyer and do not know the legal matters entering into it. However, I do know and I have seen in the past that whenever a new procedure of the issuing of bonds or investment of bonds comes along invariably someone takes exception to it, and for my clients I do not want to be in a position of having put them into a position of something that a law suit can be started because of market disruption. Well, I am afraid that even though I buy them what I think are the best credits I find myself suddenly with a bond which I have purchased, even a short bond at a premium, selling down pretty close to par.

As to what has brought about that change in market conditions for New Jersey municipal bonds,—well, as far as I was concerned, as I stated before, when I first read this [fol. 135] law my immediate impression was "well, this is a new method of procedure in the investment of municipal bonds". As I say I am not an attorney and made no attempt to interpret the law, and on the other hand as I also stated, it has been my custom and probably will be inasmuch as there are so many municipal bonds that can be bought. I do not necessarily go to attorneys to try to find out whether or not we will be justified in buying those bonds. Until matters are cleared up or I know definitely that the whole thing is just a matter of temporary excitement. I do not buy the bonds. I have watched the operations of that law. I notice there has been a great deal of litigation and I do not want to buy the bonds today. I would say undoubtedly that the market for New Jersey municipal bonds must have been affected by the enactment of that statute, in the Detroit area particularly, because we control the investment for probably eighty-five banks there, and I know

of another investment counsel firm which has taken t
same attitude we have, and one of the best local deale
there has also assumed the same attitude, and natural
if you take that many accounts out of any market it is bou
to affect the marketability of the bonds in that sectio
As I say, I cannot tell you so definitely how the high gra
New Jersey municipal bonds sold in comparison with bon
of cities of the same population and class elsewhere pri
to 1933. Between 1930 and 1933 I did not have occasi
to sell many of them because there were plenty of loc
problems in Michigan which we had worrying us at th
time. However, prior to 1930 I would say that New Jer
municipal bonds ranked equally, and perhaps in some case
[fol. 136] sold at better prices than certain other bon

As to how the market for these same bonds compar
with those same middle western bonds today, I have n
gone into the matter exhaustively. I happened to che
a circular the other day, and I found an issue of East Oran
Bonds, which I believe is one of your medium grade credi
in New Jersey at best, and certainly not among the wor
and I found that buying and selling in 40's or bonds we
offered in 40's on a 1.75 basis, which compares with bon
what I would consider similar credit in other sections
the United States, offered at around 1.40 to 1.50 basis.
also might add in connection with that that we have a rece
issue of bonds brought out in Jackson, Michigan, which
definitely a second credit in Michigan, and those bon
were offered at the same price as the East Orange bon

We have recommended the liquidation of New Jers
municipals in all of our bank accounts. They are bei
sold, with the exception of the bonds of the State of N
Jersey. And, as I say, we have purchased them and w
continue to purchase them.

On cross-examination by Mr. Dimock, the witness testifi
further as follows:

My disposition against New Jersey municipal bonds
not due entirely to what I have heard attorneys have sa
about it. Mine is purely one of caution. This results fr
a reading of the law itself. I read it myself, yes.
personal objection to it, as I say, is that it is a new meth
of enforcing the payment of these bonds. As to wheth
[fol. 137] it is effective I do not care to answer. It was
different method of procedure. That was enough for m

I would say that I read it which is in the early part of 1933. I had not had occasion to buy any New Jersey bonds at that time, no, sir. I make a distinction between county bonds and other bonds. I am well aware that the county bonds are not subject to this same law. I would not have any particular objections, I have not purchased any but I have not any objections of that nature.

In a general way I believe you can buy City of Newark, New Jersey bonds, due in '40 to yield around 2¼ to a 2.50 basis, depending on maturity. I would not say I definitely knew in 1929 Newark bonds were selling at a 4.49 basis. I would surmise that would probably be correct. I did not have occasion and have not had for so many months to go into long term bonds that I would not be competent to testify to that.

I could not say definitely that I know that in Buffalo in 1929 bonds were selling on a 4.09 basis for '44 maturity. I am not familiar with the market for long maturititse there. My guess would be probably very close to the same as Newark. That, however, is due to a matter of credit. I would not say that the credit of the City of Buffalo is worse than the City of Newark. I would say this, that the City of Buffalo in the past four years has been spending necessary sums for relief out of the issuance of new bonds. It [fol. 138] has retired practically no bonds from current income. Its maturities have been extended through the sale of refunding bonds. There has not been a creditor's committee functioning in respect to Buffalo bonds, they never defaulted. There was a creditor's committee in respect to Newark bonds.

I would consider the bonds of Montclair, New Jersey, as high grade. I have not had any of them offered to me, or have not seen any for at least a year. I would consider it one of your better New Jersey bonds, and one I would buy if I were buying New Jersey bonds. I think without this difficulty they might sell a little better than a 2.85 basis for a thirteen year bond, because I believe comparable credits in other cities—of course, I am not going into long bonds and when I say I am not familiar with them it is purely an estimate—I believe there are bonds of other cities of similar credits which can be purchased at much lower yield.

White Plains, New York, I would not call a similar credit. It has a higher debt. It is quite a different situation. To

the best of my knowledge there is no law there similar t
the Municipal Finance Commission Act in New Jersey.
would say that White Plains is not a comparable credi
The debt is higher. White Plains, if I am not mistake
has a fairly large foreign element in its population.
has tax collections, which at times have not been impressiv
and its current operations have not always been impressiv

I am not familiar with the market of Paterson, Ne
Jersey, bonds. I would not doubt that the market o
[fol. 139] twenty-one year Paterson bonds was on a 3.4
basis. I am familiar only in the shorter maturities with th
market in Yonkers bonds. Well, I would not conside
Yonkers as a particularly good credit, in comparison wit
Paterson, irrespective of any laws like the Municipal Fi
nance Act. I am not as familiar as perhaps I should be wit
the credit of Paterson. My impression, however, is tha
Paterson has some elements of stability which are lackin
in Yonkers.

I am not familiar with the market in bonds of Wes
Orange, New Jersey. I want you to understand that due t
my lack of great interest in the New Jersey situation be
cause of this law, and because of the fact that I have no
been purchasing, I have not been particularly close to th
market for New Jersey bonds. I have never made an
inquiry as to whether the relative prices between New Jerse
municipalities and comparable municipalities in other state
had changed for the worse since the passage of the Ne
Jersey Municipal Finance Act. The best way I can answe
that—from time to time I have checked the market fo
certain short term New Jersey credits, which is Plainfield
East Orange and Summit, and bonds of that nature, and
found that they represented as a general rule bargains a
compared with other similar credits in the country. I coul
understand the fact that in 1929 Buffalo bonds sold on
lower basis than in Newark, and in 1935 they sold on
higher basis than Newark. The reason is that the city o
Buffalo in 1929 had very nearly perfect tax collections.
do not believe that was true in Newark. The reason that th
bonds today are selling higher is simply due to the thing
that I mentioned earlier. I do not believe it is true tha
in 1929 the bonds of White Plains New York, were selling
[fol. 140] on a better basis than those of Montclair, Ne
Jersey, but in 1935 Montclair was selling on a better basis

Judge Avis: What does that "better basis" mean? To the investor or municipality?

Mr. Dimock: To the municipality. Lower basis I mean. Representing the better credit position of the municipality.

I cannot explain why in 1928 it might have been true that Yonkers bonds were selling on a lower yield basis than Paterson, and in 1935 Paterson sold on a lower yield basis than Yonkers. If it was I do not remember. However, today Yonkers is in rather bad shape at the moment which might easily explain the difference. I know nothing about West Orange, New Jersey. I am not familiar with the market price of Passaic bonds. Some months ago I did check the market on Passaic water bonds, but that would be the extent of it, and that was several months ago. I have not followed them closely recently. I investigated the Passaic bonds some time ago. I would not know whether it is about right that the Passaic twenty-nine year bonds were selling on a 3.90 basis in 1935. My investigation was with the view of keeping in touch with the shorter term market. I said I had paid some attention to the litigation involving the act concerning municipal finances in the State of New Jersey. North Bergen is naturally one of the outstanding examples that we out west have heard. I read over some brochures about it by, I presume, the bondholders committee. In reading this what I learned did not have any effect in reaching the conclusion to which I have testified here.

[fol. 141] As I said before, my entire attitude in the matter is one of caution. I do not want to buy municipal bonds of any kind where I feel I am liable to run into litigation. We have some bonds right now in Michigan for example, sewage revenue bonds, and I will not purchase any of those although I feel almost certain the bonds will be paid. The reason for not purchasing them is that there is a legal question involved, which I think may ultimately develop into litigation, and until that has been settled I prefer not to buy them. I would say it is a novelty rather than the opinion of attorneys which is actuating me, because novelty in any municipal situation is not always to be desired.

On redirect examination by Mr. Wood the witness testified further:

I say that it was the novelty which first made me pause, the novelty of the new method of enforcing municipal bonds.

As I say, I have followed it from time to time, and I have discussed it with other people in the bond business in Detroit. I was aware of bonds which came out since that time—I have not heard of any bondholder getting relief.

On further cross-examination by Mr. Grossman the witness testified further as follows:

It is correct that I recommended the stopping in dealing in New Jersey municipalities. I think I can pretty well place when I first adopted that policy. It would have been the latter part of 1933, at which time we made our first contact with the bank. It is true that that policy was adopted with reference to municipal bonds of New Jersey municipalities whether or not they were under the direction [fol. 142] of the New Jersey Municipal Finance Commission. My objection in dealing in any bonds issued by a municipality in New Jersey was simply because of the possibility of market fluctuation which no bank could stand. There would be no inclination for municipalities not under the control or jurisdiction of the Municipal Finance Commission act to follow sympathetically those under the act, for the reason that your institutional buyer when he makes up his mind that he is not going into the situation because he is afraid of market reaction must necessarily assume that reaction will affect all bonds of that particular community, even though some of them are naturally perhaps stronger than others.

My clients adopted my advice to liquidate their New Jersey municipals. I do not deal in bonds of the school district of Runnemede. I do not deal in any bonds of the Borough of Runnemede. My clients were able to liquidate all of their New Jersey municipals when they offered them for sale. I do not know whether there were in the bonds that I liquidated for my clients' issued by New Jersey municipalities, bonds of any other municipalities that were functioning under the control of the Municipal Finance Commission. I do not know, there may have been. I do not recall all of the bonds that were liquidated, no, I had no difficulty liquidating them.

On redirect examination by Mr. Wood the witness testified further as follows:

As to liquidation, our organization has a method of handling that matter for the smaller banks, whereby we place

the orders with brokers. The brokers confirm the purchase or sale of the security direct to the client and send out a certificate of confirmation, and we make no profit whatso- [fol. 143] ever out of the transaction. I would know the prices at which they were liquidated. I do not think these bonds were liquidated at prices comparable to the price level of similar bonds in other states. I mean they were liquidated at prices below what bonds of similar municipalities in other states would have been sold for. I could not say whether all New Jersey municipal bonds have declined in value as compared with other municipal bonds through out the country because of the laws I have spoken about. I have not examined the matter extensively. I will say that the situation I have seen recently appears to be out of line. I am familiar with the short term market. As of 1937, the shortest maturity of East Orange bonds, I do not know; I have not seen any 1938 maturity. I believe I saw some offered at a 1.25 basis, due in 1938. As to what the basis would be for a bond of a similar maturity issued by a similar municipality in some other state, I would say that for a similar credit it should not exceed 1%, because that is a money bond. I do not think there is any question but what East Orange bonds will be paid at maturity. I would say that the 1938 maturity is selling at 1.25 and I cannot think of any comparable credit in any other section which would be sold to yield better than one per cent.

Judge Avis: What does that 1.25 mean?

The Witness: That means 1.25% to maturity. 1.25% per annum per $100.

Judge Avis: 1.25%.

The Witness: Yes.

Judge Avis: Now, a bond bears what interest, the ones you were speaking about for instance?

[fol. 144] The Witness: Those particular East Orange bonds were 3's, if my memory serves me rightly, 3's or 3½'s.

Judge Avis: And selling for what?

The Witness: 1.25% for 1938 maturity.

Judge Avis: But the actual sales price?

The Witness: I do not have a basis book with me, but it would probably run from 104. That is just an estimate, however.

On the one per cent basis, the same coupon rate would be one-half a point higher. As the term of the bond ex-

tends the differential would be much greater naturally I buy a 1930 maturity, which is a 4½% bond. I may pa 108 for a bond that is returning 1.40 basis, and on the othe hand if it is a 1.50 basis it would be 107.

On recross-examination by Mr. Dimock the witness testi fied further as follows:

In comparing these East Orange bonds with a hypothetica municipality of comparable credit and in making up the hypothetical municipality, I did not have in mind a Michiga bond. I did not have in mind a bond in some state wher they had had a set sales tax for about five months an they appealed it. I had not taken that particularly in con sideration. I was assuming that the relief situation wa pretty generally handled the same way through the entir country. Simply that the municipality has got to issu relief bonds. I was assuming a state where the money wa raised by the municipalities without any State aid. I as sumed as to the hypothetical State that they did not hav as many municipal defaults as New Jersey, somewhat di [fol. 145] ferent conditions existing naturally, but that doe not necessarily affect the price of bonds of similar cred in any state. The fact that there may have been a lot o defaults within the State is not going to affect greatly th better credits in that bond or the price of the bonds. It i true that East Orange was on the verge of default an that the financing was to take care of quite a large floatin indebtedness. I was assuming that sort of credit in som other State. I followed the litigation brought by the bond holders in New Jersey to the extent of seeing what progres they were making.

In the course of my study of the situation there came t my attention an advertisement in the New York Times o January 21, 1936, in just about the form you showed m I received the advertisement with a printed letter addresse to "Depositors with the Committee for bondholders of th Township of North Bergen, New Jersey," dated Januar 21, 1936. I went out of my way to ask a bond dealer fo one because I wanted to read it.

Mr. Dimock: I would like to offer those papers evidence.

Mr. Wood: No objection.

(Received and marked Exhibit D-1.)

I believe I have seen a copy of a letter dated March 9, 1936, with the same address from the same committee.

Mr. Dimock: I offer it in evidence.

(Received and marked Exhibit D-2.)

Naturally these papers had something to do with my conclusions. Obviously nothing had been completed; nothing had been arrived at, and no action one way or another favorable to bondholders had been taken.

ARTHUR GRANT, being called and sworn as a witness in behalf of the complainant, testified as follows:

On direct examination.

By Mr. Wood:

I live in Larchmont, New York. I am a municipal bond dealer, 50 Broadway. I specialize largely in municipal bonds. I have dealt twenty-five years in municipal bonds. I have bought and sold New Jersey bonds during that [fol. 146] period. Large amounts of them, over that period. Prior to 1933 my experience with reference to the relative marketability of New Jersey municipal bonds and the bonds of similar municipalities throughout the United States was that the former was very good, and that they ranked higher in some cases. Yes. I do not think that is true today in many cases. I find my clients are taking a position adverse to the purchase of New Jersey municipal bonds. Considerable of them. I would rather go back to 1931 to give an estimate to the extent to which New Jersey municipal bonds have declined in relative marketability. Because I made some valuations on some comparison in Newark, St. Paul and Cincinnati, I found in 1931 that the City of Newark was selling on a lower return to the investor than municipalities like St. Paul and Cincinnati which are comparable cities to Newark. Today I find that is reversed. That Cincinnati and St. Paul return less to the investor today than Newark. I account for that to marketability. I have the actual figures for those bonds for 1931 and 1933. There was an offering of ten million Newark bonds maturing from 1932 to 1956 offered on a 1.90 to 3.65 basis return to the investor. Cincinnati offered one million one hundred thou-

sand bonds, similar maturity from a 3.00 to 3.85 basis. St. Paul, 1,000,000 bonds, approximately the same maturity, 2.50 to 3.75 basis. Today I find the Newark bonds offered maturities 57 to 62, offered on a 3.40 basis. Approximately today. St. Paul on a 2.25 to 2.50 basis return to the investor. Cincinnati about a 2.50.

In my opinion the lack of buyers has caused that differential. I believe the buyers are no longer buying the New Jersey bonds because the question has come up in their mind as to the enforceability of certain laws of the state to [fol. 147] protect their bondholders. I have checked the market on Runnemede bonds. I checked it through an independent broker, that is a broker that acts for dealers and he told me that the market was 5 to 10 flat. That means they would bid 5 and offer bonds at 10. That is a nominal market, however.

On cross-examination by Mr. Dimock the witness testified further as follows:

Those bonds happened to be 4½'s. To reach that city of Newark 3.40 basis those bonds would have to be selling at quite a premium. It is true when I say the buyers have some question as to the enforceability of New Jersey bonds. The question has come into public print as far as I was concerned and I have offered bonds to them —. When you showed me Exhibit D-1 and asked if that advertisement is the mention in the public print to which I had reference I do not know what they read. When I offered them bonds they said "No, we have no interest in New Jersey bonds." I do not know what brought it up in their mind except the discussion in the public press. I do not know what the discussion in the public press was. No particular article. Their attitude was that they would not buy New Jersey bonds while there was any discussion. That is the only place I saw where it was in the press. I assume that it was at the time that it was in the press they objected to buying New Jersey bonds. They told me that they were not interested in New Jersey bonds until the question being discussed had been settled. I gathered that that was because they had seen the same things in the press that I had. Just general news that comes up when a question of this kind [fol. 148] comes up. There was a question in the mind of certain attorneys as to the enforceability under the Municipal Finance Act. Specialists in municipal bonds. I do not

particularly recall any names. I might know now who it was if I could see the article. I would have to have my recollection refreshed. It was not the attorneys representing the Municipal Finance Commission. I do not know who it was they represented. It probably was attorneys representing the New Jersey municipalities. It probably was. It may have been attorneys representing the creditors. They represent the creditors too some times. Well, it was probably Thompson, Wood & Hoffman.

On redirect examination by Mr. Wood the witness testified further as follows:

These people te whom I sold bonds have their own attorneys. In the last analyses they always rely on the opinion of their own attorney. In a great many cases even when I have an opinion of a bond attorney, the bonds have to be approved by their own attorney.

On cross-examination by Mr. Grossman the witness testified further as follows:

The persons to whom I offered New Jersey Municipals objected to any municipalities or counties that it included. They objected to buying anything in New Jersey. For the same reason that they refused to buy municipal bonds. They did not mean the State in particular. The way it was quoted to me yesterday, the market on Runnemede was 5 to 10. Flat. That was school district bonds. Yes. The bond dealers or brokers was Hipkins & Toppin. I would believe it approximate that the last sale of school bonds was [fol. 149] at 72 within six months. It is very probable that the largest holders of these bonds is today holding them at 70. It is very probable that that large holder is a resident of the city of Camden which is within 7 miles of Runnemede. In view of that fact I would say that was reliable information that the market was 5 to 10. Notwithstanding that information, I would think that that quotation I received was reliable, if I may explain something. You might get an order to sell bonds at 70 and be able to get out and sell them at that price sometime, but to go in the open market and ask a dealer to buy bonds, to take his money and put into it, that is what they call a 5 to 10 market. I do buy bonds for my own account. Yes; the firm that I am with, we do. I never bought any Runnemede or Runnemede school district

bonds. Neither for my own account nor for my customers. I have inquired of brokers in the Camden area what the market was on Runnemede borough and Runnemede school district bonds. Well, this bid of yesterday was made by a Philadelphia dealer to the broker. Five to 10. Yes, I do know who made that bid. C. C. Collings & Company. I know it through the broker. He told me. They quoted a market of 5 bid 10 asked. These school bonds are generally traded in. I misinterpreted your question. I thought you meant all school bonds. I would not know that there are only four holders of Runnemede bonds in the State of New Jersey, Woodmen of the World, Harley Brothers, Eldredge, Johnson and Harley Brothers is located in Camden. Very possibly somebody else might be interested. You might get a bid for bonds. You would not get an offer on it.

[fol. 150] JOHN E. WOODBRIDGE, being called and sworn as a witness in behalf of the complainant, testified as follows:

I live in Larchmont, New York. I am in the special division of the Irving Trust Company. In my work with the Irving Trust Company, I am obliged to keep track of the investment market, particularly the municipal bond market. I have had occasion to compare the price level of New Jersey municipal bonds prior to 1933 with the price level today. I have prepared a memorandum showing that. This was prepared by me myself.

This first sheet here is a comparison of the selling prices of three New Jersey municipalities in relation to other comparable municipalities. Newark, Paterson and Perth Amboy. I compared Newark with New Orleans, La., Rochester, N. Y., Buffalo, N. Y. and San Francisco, Cal. In 1930 Newark 4½'s of 39 was selling at 4.15 basis. The average price of the bond of the municipalities to which I have compared the Newark bonds was 4.15 basis. At the present time, that is within the last six months, Newark 4's of 51 was selling on a 3.50 basis and the average of the other four cities on a 2.86 basis.

I compared Paterson with Bridgeport, Conn., Norfolk, Va., Yonkers, N. Y. and Tulsa, Okla. In 1930 Paterson 4½'s of '45 were on a 4.30 basis. The average of the other four municipalities was a 4.38 basis. In 1936 the Paterson 4½, 45's ran at 3.65 basis and the average of the other four was a 2.92.

I compared Perth Amboy with Phoenix, Ariz., Woonsocket, R. I., Greenville, S. C., Galveston, Tex. and White Plains, N. Y. In 1930 the Perth Amboy bonds 4½ 1938, [fol. 151] were on a 4.30 basis. The average on the other bonds was a 4.50 basis. In 1936, the Perth Amboy 4½ of '44 were selling on a yield basis of 4.50. The average of the other bonds was a 3.14 basis. Yes, I would say that that fairly accurately reflects the situation generally throughout the state of New Jersey.

Mr. Wood: I offer this in evidence.

(Papers received and marked Exhibits P-1 and P-1a.)

On cross-examination by Mr. Dimock the witness testified further as follows:

I have no figures for dates between 1930 and the present on these bonds. I have no way of telling offhand when this difference took place. I compared Newark with New Orleans, Buffalo, Rochester and San Francisco. I did not investigate the situation. I am not prepared to state that in any one of those four cities there has been a creditors committee and a voluntary stand off agreement for the last couple of years. They are comparable on the basis of the population and the debt per capita figures. That is true all the way through. I made no attempt to compare any other municipalities in which I found the same general conditions with respect to character of population or relation between floating debt and funded debt, and that sort of thing.

"Mr. Dimock: May I renew my motion to strike out all of this testimony on the ground there is no probative value on the issue on which it is offered?

Judge Davis: Motion overruled. You may have an exception."

[fol. 152] Arthur Robinson, being called and sworn as a witness in behalf of the defendant, testified as follows:

On direct examination by Mr. Dimock the witness testified as follows:

I am a municipal bond dealer with Collier, Robinson & Company. I do business in Newark. I have been in the business about 15 years and for the last ten years particularly interested in the New Jersey municipal bonds. We purchase and sell municipal bonds for our clients and for

ourselves. In the course of that business, we have occa sion to make a study of the yields of municipal bonds.

"Q. How would you characterize the relative credit o New Jersey municipalities and other municipalities, sa since 1931?

Mr. Wood: I object to that. He has not qualified himsel to testify to that. He says that he specialized in New Jer sey bonds.

Judge Davis: Well, you may qualify him further, if yo want to."

In the course of dealing in New Jersey bonds, we have ha occasion to study the general market for municipal bonds In a general way we have done so since 1931. New Jerse municipal bonds have been somewhat lower. That has bee true since 1931. The fact that about one-third of the munici palities in New Jersey were in default in payment of prin cipal and interest in 1931 did have something to do with it That situation still exists to some extent to this day.

[fol. 153] There were several very important factors. On was that there had been what we considered faulty financ ing in the state of New Jersey, and that is to say the issu ance of temporary bonds for which there were no provision for payment except by refunding, and it was fairly obvious that if the financial conditions were not good at the time that the refunding was necessary that there would be de faults or postponements of payment or a refunding at un favorable rates, which would have created a burden and hardship on the municipalities. Other than that New Jerse had been making up budgets anticipating the full paymen of all taxes and they were not getting the full taxes and they were building up deficits. For that reason, and per haps some others, New Jersey municipal bonds sold lower There is another pretty important reason. Due to the fac that the New Jersey municipalities pay the county each yea a county tax on the basis of its assessed valuation every municipality attempts to keep its assessed valuation dow so that it pays the smallest possible amount to the county and that in turn showed municipalities in New Jersey in a bad light, because it showed a ratio of debt to assessed val uation much higher than it did in other municipalities throughout the country.

In other words, a person examining a statement through out the state would say that some municipalities in New Jer

sey had what appeared to be a debt which was 25 to 30 per cent of the assessed valuation without reference to the possible fact that the assessed valuations were not one hundred per cent.

There may have been other factors militating against the credit of New Jersey municipalities as far back as 1931. [fol. 154] New Jersey issued many bonds in a short time. It is my opinion that New Jersey municipalities now enjoy a less favorable credit position comparable to municipalities of other states.

I think there is an element in that unfavorable position, the feeling of investors generally that there is some doubt about the enforceability of New Jersey bonds. I think that there is a more or less recent development. It does exist now. The effect which this feeling of fear on account of enforceability had on the market took place on or about the time of the publication—Exhibit D-1.

FRANK L. GARY, being called and sworn as a witness in behalf of the defendant, testified as follows:

On direct examination.

By Mr. Dimock:

I am head auditor of the Municipal Finance Commission. That has to do with the financial affairs of the municipalities of the state of New Jersey. I am in general familiar with the financial affairs of New Jersey municipalities. Relief is financed in New Jersey through the local budgets in addition to the aid given by the state. The amount of money given by the State is determined by a committee which the legislature has created. Mr. Mudd is chairman, I believe. The State relief funds have had many sources. At the present time I believe they are using money received from inheritance tax purposes. At one time there was a sales tax in New Jersey. The purpose of that was to finance State relief. The proportion of the State's contribution and the municipalities' contribution to the State's relief varies in a great many municipalities. I do not know the exact basis [fol. 155] upon which that is handed out to the various municipalities, although I understand that in the municipalities that are in great distress and some of the others, those that are in greater distress, get a larger proportion-

ate share of the moneys that are distributed. I think between 60 and 70 New Jersey municipalities are at pre in default in payment of principal and interest on their d It is true that in 1931 there were as many as one-third of municipalities of the State in that condition. The city Jersey City to my knowledge has not defaulted in its d The city of Camden has had a complete refunding. I true that in Newark there was a creditors committee for which entered into a standstill agreement. The city Asbury Park is in default in the payment of its princ and interest. The city of Atlantic City still has not c pleted its refunding. The township of North Bergen i default. I just can't recall just which other large ci there are at the present time which are or have been in fault in the payment of their public debt, although there two pretty large counties that were pretty seriously in fault, Camden county and Atlantic county, both of which funded recently. These are the only two counties which funded.

On cross-examination by Mr. Wood the witness testi further as follows:

As I have said, I cannot tell you the form under which State relief funds are allowed to the municipalities of State.

[fol. 156] Lawrence Edward Chermak, being called sworn as a witness in behalf of the defendants, testifie follows:

On direct examination.

By Mr. Dimock:

I am a law clerk at the present time. I am employe your firm. I prepared that table from the public rec of the prices of bonds in the New York bond market, paper which you showed me headed "Comparison of B Figures", which purports to show the names of munici ties, population, description of bonds and basis upon w they were sold, which you have been using in the cr examination of witnesses. It is correct.

Mr. Dimock: I offer it in evidence.

(Received and marked Exhibit D-3.)

(Here follows one paster, side folio 157)

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[fol. 157]

EXHIBIT "P-1"

Selling Prices of Three New Jersey Municipalities in Relation to Other Comparable Municipalities

City or Town	1930 U. S. Census Population	Total Net Debt (000)	Debt Per Capita	Tax Rate Par $1,000	Total Assessed Value	Assessed Value per Capita	Coupon	Maturity	Yield	Quotation Obtained From
Newark, New Jersey	442,337	$112,738	$254.87	$33.60 (35)	$943,602 (100%)	$2,133	4	1951	3.50	J. B. Hanauer
Average	498 591	105,802	206.27	.....	.....	.....	...	....	2.86	.....
New Orleans, La	458,762	80,227	179.93	38.75 (35)	435,107 (100%)	948	4½	1950	3.55	Chronicle 8/6/36 P. 94
Rochester, N. Y	328,132	58,559	178.45	33.76	632,748 (78%)	1,928	4	1947	2.20	Roosevelt & Wiegand
					811,716 (actual)	2,474				
Buffalo, N. Y	573,076	108,913	190.04	28.60	962,298 (100%)	1,679	3.9	1951	3.00	Chemical
San Francisco, Calif	634,394	175,517	276.66	36.82	1,141,815 (45%)	1,800	4	1949	2.70	Schwabacher & Co.
					2,537,366 (actual)	3,966				
Paterson, New Jersey	138,513	17,103	123.47	37.40	183,199 (100%)	1,322	4½	45	3.65	J. B. Hanauer
Average	138,082	21,045	155.60	.....	.....	.....	...	....	2.92	.....
Bridgeport, Conn	146,716	11,709	79.76	31.80	234,551 (100%)	1,599	4½	45	2.30	Quist
Norfolk, Va	129,710	30,100	232.05	28.00	161,201 (100%)	1,243	4½	47	3.25	Quist
Yonkers, N. Y	134,646	30,636	227.52	33.96	326,024 (100%)	2,421	4½	45	3.15	Quist
Tulsa, Okla	141,258	11,738	83.09	24.32	101,238 (50%)	716	5½	47	3.00	Harris Trust
Perth Amboy, New Jersey	43,516	10,766	247.40	55.77	50,814	1,168	4½	44	4.50	J. B. Hanauer
Average	35,917	7,939	211.92	.....	.....	.....	...	....	3.14	.....
Phoenix, Ariz	48,118	9,279	192.80	63.10	64,142 (66%)	1,333	4	48	3.15	Chemical
Woonsocket, R. I	49,376	5,729	116.00	25.00	75,680 (100%)	1,532	4½	41	2.75	Chronicle 8/6/36 P. 98
Greenville, S. C	29,154	5,410	185.57	45.00	8,866 (10%)	304	5	42	3.40	" " "
Galveston, Tex	52,938	8,510	160.70	37.50	58,189 (75%)	1,099	5	44	3.125	" " P. 99
White Plains, N. Y	35,830	14,494	404.52	24.28	166,243 (100%)	4,639	4¼	44	3.00	Irving

August 21, 1936.

[Vol. 158]

EXHIBIT "P-2"

Comparison of Yield Basis Prices of Certain New Jersey Obligations with the Obligations of Other Municipalities

Bank and Quotation Record dated July 11, 1930

	Rate	Maturity	Yield Basis 1936	Rate	Maturity	Yield Basis 1930	
Newark, N. J.	4%	1951	3.50	4½%	1950	4.15	
Average			2.86			4.15	
New Orleans, La.	4½	1950	3.55	4½	1942–66	4.35	
Rochester, N. Y.	4	1947	2.20	4½	1948	4.05	
Buffalo, N. Y.	3.9	1951	3.00	4½	1964	4.00	
San Francisco, Calif.	4	1949	2.70	5	1952	4.20	
Paterson, N. J.	4½	1945	3.65	4½	1945	4.30	
Average			2.92			4.38	
Bridgeport, Conn.	4½	1945	2.30	4½	1931–65	4.17	Ave.
Norfolk, Va.	4½	1947	3.25	4½	1942	4.75	
Yonkers, N. Y.	4½	1945	3.15	4½	1937–49	4.05	
Tulsa, Okla.	5½	1947	3.00	5½	1947	4.55	Ave.
Perth Amboy, N. J.	4½	1944	4.50	4½	1938	4.30	
Average			3.14			4.50	
Phoenix, Ariz.	4	1948	3.15	4½	1932–56	4.50	
Woonsocket, R. I.	4½	1941	2.75	4½	1944	4.40	
Greenville, S. C.	5	1942	3.40	5	1942	4.65	Ave.
Galveston, Tex.	5	1944	3.125	5	1944	4.90	
White Plains, N. Y.	4¼	1944	3.00	4¼	1935–59	4.15	Ave.

August 29, 1936.

(Here follow four photolithographs, side folios 159

EXHIBIT "D-1"

Committee for Bondholders
of
TOWNSHIP OF NORTH BERGEN, NEW JERSEY

Committee
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Associate Counsel
ARTHUR T. VANDERBILT, Esq.
790 Broad Street
Newark, N. J.

January 21, 1936.

To Depositors with this Committee and Other Creditors of the Township of North Bergen, New Jersey:

A plan of readjustment of the indebtedness of the Township of North Bergen, New Jersey, proposed by the so-called "Conciliation Committee", has been made public, and the assent of the bondholders of the Township to the plan is now being requested, with the view of instituting a bankruptcy proceeding under the so-called "Federal Municipal Bankruptcy Act". This plan has been given careful consideration by this Committee and its counsel and it is with sincere regret that the Committee finds it not acceptable.

In the main the Committee is agreeable to the proposals respecting interest rates and maturities. The plan, however, ignores the effect of certain administrative practices of the officials in charge of the fiscal affairs of the Township. This Committee believes that such must be considered by all creditors and dealt with in any plan to provide permanent security and restoration of the credit of the Township. Such safeguards undoubtedly could be formulated by creditors thoroughly acquainted with all the facts. It is because of the absence of these necessities and for other substantial reasons that this Committee regrets that it is necessary to reject the plan in whole, and it recommends similar action by all other bondholders.

The Committee's objection to the refunding plan is due primarily to the fact that, regardless of the financial terms of the proposed bonds or the covenants to be made by the Township to insure their payment, such bonds like all bonds issued under the present laws of the State of New Jersey, by municipal corporations of that State are, in its opinion and that of its counsel, unenforceable in law as well as in practice, and the holder of such bonds is compelled to rely for their payment solely upon the good faith of the officials of the issuing municipality and of the Municipal Finance Commission of the State of New Jersey.

The Committee is advised by its counsel that all statutes of the State, in force at the time a municipal bond is issued, enter into and become a part of the contract made upon the bonds. Under the provisions of an act entitled "An Act Concerning Municipal Finances" (Chapter 340 of the Laws of New Jersey 1931, as amended and supplemented), whenever a municipal corporation defaults it may file a petition in the Supreme Court of New Jersey, the effect of which is to cause the Municipal Finance Commission to function in that municipality. The Municipal Finance Commission is now functioning in the Township of North Bergen, and if the Township should default upon the refunding bonds proposed to be issued under the plan of readjustment, suggested by the so-called "Conciliation Committee", it would undoubtedly again function in the Township upon the petition of the Township. The powers which this legislation vests in the Municipal Finance Commission and the restrictions which it imposes upon the rights of creditors, all become a part of the contract made with the holders of the proposed refunding bonds, and supplement and modify the covenants made in those bonds and the rights which they purport to give to their holders thereof.

One of the supplements to the Act Concerning Municipal Finances, to wit, Chapter 292 of the Laws of 1935, authorizes the Municipal Finance Commission, by resolution, to determine "the maximum amount for any purpose of expenditure * * * which may be included in any annual budget or tax

ordinance and certify the same to the governing body of the municipality and to the county board of taxation, and *no appropriation or tax levy for any purpose* * * * shall to the extent that it exceeds the maximum amount so fixed by the Commission be valid or effective".

Under the quoted provisions of this statute, the Municipal Finance Commission may, at any time, when it is functioning in a municipality, reduce, in any amount, in its discretion, the appropriation made for the payment of the principal and interest of the bonds of any community in which it is functioning. This statute will become part of the contract embodied in the proposed refunding bonds, and the bondholders, by accepting the bonds, will assent to its provisions, so that they would have no ground to complain in any court, State or Federal, if the Municipal Finance Commission should almost completely remove from the budget the appropriation made in any year for debt service. The covenants, therefore, for the levy of taxes, contained in the proposed plan of readjustment, are unenforceable in law as well as practice by the bondholders, and for their observance the bondholders would be compelled to rely solely upon the good faith and discretion of the Township officials and of the Municipal Finance Commission of the State of New Jersey.

The Municipal Finance Commission Act, moreover, contains limitations of a serious character upon the right of a holder of bonds, issued by a municipal corporation in New Jersey, to sue for the enforcement of the obligation. Before a bondholder holding a bond issued after the enactment of this Act and therefore subject to its provisions may bring a suit for a writ of mandamus to compel the payment of his obligation, he is obliged, first, to institute a suit in the Supreme Court of New Jersey for permission to bring the suit for mandamus, and, if he obtains permission to bring such a suit, he may not sue on behalf of himself, but is required to sue on behalf of all bondholders. It is contended by counsel for the Municipal Finance Commission, in several suits now pending in the Courts, that this statute provides the exclusive remedy for the enforcement of municipal securities in the State of New Jersey, and that it ousts even the Federal courts of jurisdiction to compel the observance of the contracts made with the bondholders.

It is also contended by the Municipal Finance Commission and by its counsel that the statute prevents the holder of any bonds, who has reduced his claim to judgment, from obtaining a special levy, for the payment thereof, under another existing statute of the State of New Jersey, known as the "Execution Act", and that his only remedy, if he has one, is to sue on behalf of all bondholders, subject to the limitations of the Act Concerning Municipal Finances, and obtain the inclusion in the budget of whatever amount is ordered by the Court to be provided in that year for the payment of the claims of all of the bondholders of the municipality.

That remedy, under conditions prevailing when a municipality is in default, is of little value to the bondholders, for, under the laws of New Jersey as they now exist, the claim of a bondholder upon the tax levy of the municipality is the fourth, and in some instances, the fifth lien upon the revenues. Under these laws the first moneys collected by the municipality must be paid to the State to satisfy the State tax. The next moneys must be paid to the county to satisfy its tax in full. If there is any overlapping school district, the next moneys must be paid to the school district until its claims are met in full. The next moneys collected are applied to current operating expenses of the municipality, and the balance, if any, is subject to the claims of the bondholders.

It is perfectly obvious that if there be any substantial amount of delinquency in the payment of current taxes, after all these prior claims upon the revenues are met, there will be no current taxes available for the payment of the claims of bondholders. In fact, the levy of a tax ostensibly for the payment of debt service, merely has the effect of insuring the payment of the claims of the State and county and school district and the current operating expenses of the municipality.

Moreover, the Municipal Finance Commission asserts the right, under this statute, to withhold any funds that are collected which might be available for the payment of the claims of creditors, and has, in fact, done so in a number of communities in which it is operating. In the case of Edwin H. Barker *et als.* v. The Township of North Bergen, now pending in the United States District Court, District of New Jersey, the Chairman of the Municipal Finance Commission testified that the Commission is functioning in twelve communities in that State, and that it has functioned in some of those municipalities for several years. He testified that in each of these municipalities during the time the Commission was functioning tax levies were made for the payment of the claims of bondholders, but that nothing had been paid to any bondholder, with the exception of one coupon on the outstanding refunding bonds of the Township of North Bergen and a preferential payment of principal and interest which had been made to the holders of certain school bonds of that township. In answer to the question what became of that part of the levy made by those communities for debt service, which was collected during the time the Commission was functioning, he answered:

"It has gone for the payment of State and County taxes for the payment due out of the tax levy for local school purposes and for operating expenses."

The following question was also asked the Chairman of the Commission:

"So that the mere fact that the Commission approves a budget which contains an item for the benefit of bondholders and noteholders does not mean that the bondholders and noteholders are going to get any money?"

His answer was:

"No; in some cases there have been mandamuses issued for the payment of State and county taxes."

The Chairman of the Municipal Finance Commission further admitted in testifying in this case, that a very large sum of debt service money had been permitted to accumulate in the Township of North Bergen (your Committee contends this sum aggregates approximately $1,806,000), whereupon the Court addressed the Chairman as follows:

"Well I gather from your testimony that the only reason why funds that have accumulated in these different accounts are not disbursed to those entitled to them is that you feel that by holding them for a while the municipality will be in a better position to cause its creditors to agree upon a plan of refinancing.

A. Yes, sir.

Q. Is that correct?

A. That is correct.

Q. That would mean, would it not, in the last analysis, that what is being done is the withholding of these funds as a sort of a club over the heads of creditors until such time as they may be forced to come in by virtue of this holding out?

A. Some people look on it in that light, your Honor, but added to that, added to that, so far as I am concerned, is this, that these funds come from several different sources."

We have set forth these quotations from the testimony of the Chairman of the Municipal Finance Commission for the enlightenment of any bondholder who feels that he is safe in waiving his right to enforce in the Courts the obligations of his bond and in relying upon the Municipal Finance Commission to enforce his rights for him.

All of the statutes, of which your Committee complains, were enacted after the outstanding bonds of the Township of North Bergen were issued, and in the opinion of counsel for the Committee violate the Constitution of the United States in that they impair the obligation of contract. Bonds issued since the passage of these statutes, however, are subject to the limitations prescribed by those acts, and they would, therefore, be perfectly valid so far as concerns refunding bonds issued while they are in effect. Section 210 of the Act Concerning Municipal Finances, as amended by Chapter 225 of the Laws of New Jersey 1935, contains a provision authorizing the inclusion in the resolution, adopted by the municipality for the issuance of refunding bonds, of a provision that "in case of default in payment of the principal of or interest on any such note or bond, the holder thereof shall not only have all his rights and remedies thereunder, but in addition shall be reinvested with such of the rights or remedies which he would have had were he then the owner and in possession of the instrument in exchange for which such note or bond shall have been issued as may be specified in such resolution". It is not entirely clear to what extent the Township might, under the authority of this statute, reserve to the holders of the proposed refunding bonds the rights which they possessed prior to the enactment of the statutes, which are objected to by your Committee, but the Committee deems it significant that, not only does the plan make no provision for such a preservation of rights, but, on the contrary, expressly provides that the bondholders, by accepting refunding bonds, shall surrender any rights which they have upon the outstanding bonds. Just what motivated the so-called "Conciliation Committee" to ignore this statutory provision for the preservation of rights of creditors is unknown to your Committee.

In view of the fact that your Committee is advised that counsel for the "Conciliation Committee" were the attorneys for the Municipal Finance Commission, it feels justified in urging all bondholders to consult their own counsel before expressing any opinion regarding the merits of the proposed refunding plan. In making this recommendation the Committee does not question the integrity either of the members of the "Conciliation Committee" or of its counsel, but it does feel that bondholders are entitled to and require the advice of independent counsel upon a matter of such far-reaching importance to them.

When the laws of New Jersey permit of the issuance of refunding bonds which, in the opinion of this Committee and its counsel, are enforceable obligations, the Committee will be glad to accept a refunding plan providing for the issuance of refunding bonds, of the maturities and bearing the rates of interest proposed by the "Conciliation Committee". In the meantime, the Committee feels obligated to continue the litigation which it has instituted for the protection of the rights of its depositors.

It has been announced in the current press that the Municipal Finance Commission of New Jersey has approved the proposals of the "Conciliation Committee". Bondholders need not be unnecessarily disturbed thereby. Such action by the Municipal Finance Commission does not in itself deprive bondholders of their rights, nor bind non-assenting holders to the terms of any proposals so approved. Expressions of approval were given by said Commission to the plan proposed by the Seaboard Trust Co. and to other proposals instigated by those in charge of the fiscal affairs of the Township of North Bergen.

The Committee would remind bondholders that the current default of this Township is the second serious default, following an original one, all within the short period of four years. Therefore, in order to best protect bondholders and the Township against a repetition of these defaults, this Committee deems it necessary to reject all proposals such as those of the Conciliation Committee, which may be deemed expedient, but which lack legally enforceable pledges necessary to afford such protection.

In rejecting the proposals of the "Conciliation Committee" and other similar proposals and in resisting their application to deposited bonds, this Committee has taken its stand only upon the advice of and in keeping with the counsel of competent legal authority engaged by the Committee for this purpose. Bondholders desiring protection against possible loss resulting from the attempt contemplated by the "Conciliation Committee" to proceed to enforce its proposals through the operation of proceedings under the "Federal Municipal Bankruptcy Act", and against possible loss resulting from a continuation of the administrative program of those in charge of the fiscal affairs of the Township, are invited to deposit their bonds with this Committee.

Copies of the Deposit Agreement and further information can be obtained from the Secretary.

Respectfully submitted,

EDWIN H. BARKER
THOMAS E. HARPER
HUGH D. MONTGOMERY
PHILIP A. RUSSELL
As a Committee.

[fol. 163] Advertisement from New York Times, January 21, 1936

To Holders of Bonds or Other Financial Obligations of the Township of North Bergen, New Jersey:

This Committee announces its rejection of the proposals for refunding the indebtedness of the Township presented to bondholders by the so-called Conciliation Committee.

The Committee's objection to the refunding plan is due primarily to the fact that regardless of the financial terms of the proposed bonds or the covenants to be made by the Township to insure their payment, such bonds like all bonds issued under the present laws of the State of New Jersey by municipal corporations of that State are, in its opinion and that of its counsel, unenforceable, and the holders thereof are compelled by the effect of these statutes to rely for their payment solely upon the good faith of the officials of the issuing municipality and of the Municipal Finance Commission of the State of New Jersey.

Detailed comments upon these statutes and their effect are embodied in a report to bondholders, copies of which can be secured by addressing the Secretary, W. D. Bradford, 115 Broadway, New York City.

Dated, January 21, 1936.

Committee for Bondholders: Thomas E. Harper, Hugh D. Montgomery, Philip A. Russell, Edwin H. Baker, Chairman, 100 Broadway, N. Y. C.

W. D. Bradford, Secretary, 115 Broadway, N. Y. C.

General Counsel:
Thomson, Wood & Hoffman,
2 Wall Street, N. Y. C.

Associate Counsel:
Arthur T. Vanderbilt,
790 Broad Street, Newark, N. J.

Depositary:
Irving Trust Company,
1 Wall Street, N. Y. C.

(Here follows one photolithograph, side folio 164)

EXHIBIT "D-2"

Committee for Bondholders
of

TOWNSHIP OF NORTH BERGEN, NEW JERSEY

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March 9, 1936.

To Depositors with this Committee and other Bondholders of the Township of North Bergen, New Jersey:

It is apparent from the number of inquiries coming to the Committee that many depositors and other holders of bonds of the Township of North Bergen are under the impression that the repeal of Section 2 of Chapter 292 of the Laws of 1935 by the Legislature of the State of New Jersey on January 27th, removes all objections of this Committee to the limitations upon the enforceability of the proposed refunding bonds to be issued under the plan of refunding proposed by the Conciliation Committee. The Committee, therefore, desires to make clear that the repeal of said Section 2 of Chapter 292, Laws of 1935, does not remove all of the objections to existing laws mentioned in the Committee's report of January 21st, 1936, and accordingly the Committee is still unable to advise bondholders to accept refunding bonds under the proposed plan of the Conciliation Committee.

The repeal of Section 2 of Chapter 292 was undoubtedly a step forward, and it is unfortunate that the repealing act could not have been a part of a constructive program of legislation designed to confer on bonds being presently issued the same remedies, in case of default, as existed prior to the enactment of Article III-A of the Municipal Finance Commission Act. Meantime, it would seem advisable for bondholders to continue to insist upon the right to receive refunding bonds with remedies at least as adequate and efficient as those existing upon the bonds they are called upon to surrender. The Committee is proceeding to establish as speedily as possible in the Federal Courts the rights possessed by the outstanding bonds.

The Committee requests all bondholders to join in this effort and accordingly invites all bondholders who have not yet deposited their bonds with this Committee to do so at once. Further information and forms of letters of transmittal can be obtained by addressing the Secretary, W. D. Bradford, 115 Broadway, New York City.

Respectfully submitted,

Committee for Bondholders of the
Township of North Bergen, New Jersey.

THOMAS E. HARPER,
HUGH D. MONTGOMERY,
PHILIP A. RUSSELL,
EDWIN H. BARKER, *Chairman.*

[fol. 165] EXHIBIT "D-3"

Comparison of Basis Figures

Municipality	1930 Population	1929 Term Years	1929 Basis %	1935 Term Years	1935 Basis %
*Newark, N. J.	442,337	20	4.49	20	3.45
Buffalo, N. Y.	573,076	15	4.09	13	3.49
Trenton, N. J.	123,356	16 1/3	4.20	16	3.19
*Albany, N. Y.	127,412	16	4.18	10	2.08
*Montclair, N. J.	42,017	13	4.68	13	2.85
White Plains, N. Y.	35,830	13	4.27	13	3.65
Bayonne, N. J.	88,979	11	4.47	11	3.16
*Schenectady, N. Y.	95,692	10	4.32	10	2.46
		1928			
Summit, N. J.	14,556	15	3.97	3 5/6	1.91
New Rochelle, N. Y.	54,000	15	4.23	6 1/3	2.57
*Paterson, N. J.	138,513	19	4.33	21	3.47
Yonkers, N. Y.	134,646	15	3.91	10	3.74
*West Orange, N. J.	24,327	15 1/3	4.18	15 1/3	2.65
Ithaca, N. Y.	20,708	11 3/4	3.87	11 3/4	3.17
*Passaic, N. J.	62,959	21	4.29	29	3.90
Mt. Vernon, N. Y.	61,499	11	4.23	11	4.00

* More favorable showing.

[fol. 166] IN UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

In Equity. E-5025

EDWIN H. BARKER et al., Plaintiffs,

vs.

TOWNSHIP OF NORTH BERGEN et al., Defendants.

Final Hearing

Statement of Evidence

Before Hon. Guy L. Fake, U. S. D. J.

Newark, N. J., Monday, Dec. 16 and 23, 1935.

APPEARANCES

Arthur T. Vanderbilt, Esq., F. W. Hall, Esq., Messrs. Thomson, Wood & Hoffman, by David M. Wood, Esq., and Richard M. Maxwell, Esq., for plaintiffs.

Hon. William A. Stevens, Esq., Messrs. Hawkins, Delafield & Longfellow, by E. J. Dimock, Esq., and B. L. Visscher, Esq., for Municipal Finance Commission.

Nicholas S. Schloeder, Esq., for defendants.

Messrs. Burke, Sheridan & Hourigan, by John H. Sheridan, Esq., for Seaboard Trust Company.

Messrs. McDermott, Enright & Carpenter, by James D. Carpenter, Jr., Esq., for Metropolitan Life Insurance Company and other life insurance companies.

Messrs. Schwartz & Schwartz, by Selig Schwartz, Esq., for a bondholder.

(P. 114)

* * * * * * *

WALTER R. DARBY, called and sworn on behalf of the plaintiff, testified in part as follows, on direct examination by Mr. Vanderbilt:

Q. And who are the members of the Commission?

A. The State Tax Commissioner, the Attorney General and now the State Auditor; under an Act of the Legislature I became State Auditor on July 1, 1933.

Q. And you are more or less familiar, I take it, with the work that the other two members of the Commission have to do?

A. I am.

[fol. 167] Q. I suppose there is no doubt, is there, that the three men who have been picked to be members of that Commission are perhaps three of the busiest men attending to the government of the State?

A. I can speak with assurance with regard to one of them.

Q. Namely yourself. You are fairly familiar, I think, with the fact that that would apply also to the other two?

A. They are busy men, yes.

Q. Now, what is the purpose of the Municipal Finance Commission?

A. I would say that the purpose or the function of the Municipal Finance Commission is to act in an advisory and supervisory capacity to municipalities which come under its jurisdiction.

(P. 72-73)

* * * * * * *

Q. Now, have there been any payments to bondholders in any of the municipalities that have come under the jurisdiction of the Municipal Finance Commission?

A. Either principal or interest, or both?

Q. Well, start with principal.

A. My general answer to that would be No, on the theory that the Municipal Finance Commission is—one of its functions is to prevent that sort of thing. In other words, if a bondholder cannot be paid in full, then nobody gets paid.

Q. Anything.

A. There have been some exceptions. One of which is this school funding bond issue in North Bergen.

Q. Well, barring some very unusual case such as this resolution which was just read into the record by the Township Clerk, there have been no payments of principal to any [fol. 168] bond holder or note holder in any of the twelve municipalities in which the Commission is functioning?

A. Generally speaking, that is true.

Q. And you so testified before the Securities & Exchange Commission?

A. Yes, sir.

Q. Now, have there been payments of interest to the bond or note holders in these twelve municipalities since the Commission——

A. The only one which I recollect is this school—the interest on the school funding issue of North Bergen.

Q. That is this particular resolution that was read?

A. I wasn't here when Mr. Beisch testified.

Q. Well, it is the resolution——

The Court: Let him read it. Take a recess for a minute and read it.

Q. That is the only exception that you know of?

A. There is another exception as in the Borough of Manville which was refunded and the interest that was paid was paid ratably and equitably to all.

The Court: At the time the interest was paid to the holders of these school bonds were there other bonds of the municipality in default?

The Witness: I think so, yes.

The Court: Upon what theory then was the payment approved by your Commission?

The Witness: On the theory of economy because the arrangement was that the bonds bore 6% interest and the holders of these bonds agreed to accept one coupon during the year for the full year's interest. In other words, accept 3%.

[fol. 169] The Court: How could you say you were not giving a preference without first having marshalled all the assets?

The Witness: I cannot answer that.

Q. Well now, in the case of Manville was there any interest paid there before the refunding was completed?

A. Not to my recollection. Adjustment of interest was made upon the refunding.

Q. Yes. Now, barring the exception of Manville, where interest was paid on the refunding plan being put through, and barring the payment of principal and interest on the school bonds of North Bergen, which are referred to in the resolution of the Township of December 5, and in the resolution of your Commission of December 7, has any interest been paid to any creditors of any of these twelve municipalities since the Commission began to function in them?

A. An arrangement was entered into with all the creditors of the Borough of Lavallette in which they agreed to accept ratably the amount of money which was available for the payment, and also agreed to reduce the interest for 1936 to 4%.

Q. And have they been paid interest under that arrangement?

A. Not as yet.

Q. Well, I am dealing now with those who have been paid interest as distinguished from those where arrangements were made to pay interest in the future.

A. My recollection is that there aren't any others.

Q. Every one of these municipalities had funds on hand in their sinking fund and assessment fund and reserve fund, that might have been paid out to bondholders and noteholders?

A. To a greater or less extent, yes.

(P. 78-80)

* * * * * * *

[fol. 170] The witness testified in part further as follows, on cross-examination by Mr. Dimock:

Q. Well, Mr. Darby, in this case does the Commission believe that the bonds should be impounded indefinitely until a refunding plan can be agreed upon?

Mr. Vanderbilt: May I have my objection noted, without burdening the record with the reasons?

The Court: Yes.

A. No, not indefinitely; but the funds, these funds, should be used in connection with a refinancing plan.

Q. Well, assuming that a refunding plan was despaired of, would the Municipal Finance Commission be prepared to direct the distribution of the bond funds?

A. I would say not.

Q. Well, why not, Mr. Darby?

A. Because there are questions involving the status of the creditors with respect to these funds, not only the bondholders but other creditors.

Q. How does the Commission think that those questions ought to be determined?

A. They should be determined by some court of competent jurisdiction.

Q. I understand that you would favor that only as a last resort.

A. Yes.

(P. 121)

* * * * * * * *

Q. (Pending question read by the Reporter as follows: "Will you state in general your reasons for believing that the bond funds of North Bergen should be impounded until a refunding agreement can be made?")

A. Well, my view as to that is that a municipality should be brought out of default as promptly as possible; but my [fol. 171] feeling also is that the creditors should recognize the condition of the municipality, because if it is admitted, as I think it is, that the municipality is not able to meet its obligations at the present rates and with the present maturities, to continue the default simply increase the load and tends to defeat any reorganization or refinancing.

Q. Now, what is the bearing of that, Mr. Darby, on the question of whether these bond funds should be distributed presently or retained pending a reasonable opportunity for a refunding plan?

A. The municipality isn't able to pay what it owes on its debts now. If it were, the debts would be paid. To continue it simply increases the amount of the default in an ever increasing amount; and I don't know when any reorganization might be effected under those conditions.

Q. You mean if the bond funds were paid out——

A. Yes.

Q. ——as fast as they accrue?

A. If these bond funds are paid out as they accrue, the municipality would still be in default, and an ever increasing default.

Q. That is, you believe that there must be some cash funds to be distributed to accomplish a refunding plan.

A. Yes; otherwise the creditors are not willing to accept a refunding plan, unless there is some cash involved in it.

Q. So that you believe that a distribution of these bond funds now would postpone a refunding of the municipality?

A. I certainly do.

By the Court:

Q. Well, in no instance could these funds be turned over to anyone other than the individuals entitled to them.

A. No, your Honor.

[fol. 172] Q. Then what difference would it make whether you pay them out now or in the future?

A. Well, I feel this, that it is both to the interest of the creditors and the municipality to bring the municipality out of default under a plan by which that municipality may reasonably be expected to maintain its payments in the future.

(P. 140-141)

* * * * * * *

The witness testified in part further as follows, on redirect examination by Mr. Vanderbilt:

By the Court:

Q. Well, I gather from your testimony that the only reason why funds that have accumulated in these different accounts are not disbursed to those entitled to them is that you feel that by holding them for a while the municipality will be in a better position to cause its creditors to agree upon a plan of refinancing.

A. Yes, sir.

Q. Is that correct?

A. That is correct.

Q. That would mean, would it not, in the last analysis, that what is being done is the withholding of these funds

as a sort of a club over the heads of creditors until such time as they may be forced to come in by virtue of this holding out.

A. Some people look on it in that light, your Honor, but added to that, added to that so far as I am concerned, is this, that these funds come from several different sources.

(P-. 156-57)

[fol. 173] In United States District Court, District of New Jersey

In Mandamus

United States of America ex Rel. Sovereign Camp, Woodmen of the World, Relator,

vs.

Board of Education of the Borough of Runnemede in the County of Camden, a Body Corporate of the State of New Jersey, et als., Defendants

Narrative Reduction of Transcript of Record

Statement of Evidence

Appearances

Arthur T. Vanderbilt, Esq., for plaintiff-relator.
William A. Stevens, Esq., E. J. Dimock, Esq., for Municipal Finance Commission.
Henry M. Evans, Esq., for School District of Runnemede.

Transcript of Proceedings Taken at Camden, N. J., April 3, 1936, Before Hon. John Boyd Avis

"Mr. Dimock: At the outset, on behalf of the Municipal Finance Commission, I should like to file a petition to intervene.

The Court: That was done in the other case, was it not?
Mr. Vanderbilt: Over my objection.
The Court: Do you object to it now?
Mr. Vanderbilt: Yes.

The Court: All right, the motion for filing will be granted and an exception allowed.

Exception noted.

Mr. Vanderbilt: May I have the objections which were noted in the other case noted here without taking the time of the court to repeat them?

The Court: Yes——

Mr. Vanderbilt: Mr. Dimock and I agreed the other day that certain of the questions which were asked in the [fol. 174] Chester Township case relating to the Municipal Finance Commission might stand in this case, if counsel for Runnemede were agreeable. It would be a mere duplication of testimony to repeat them. * * * The line as to the general activities of the Municipal Finance Commission and the scope of its authority in general, not bearing upon this particular municipality——

The Court: Very well. That may be agreed to then."*

Thereafter and following further proceedings, Frank L. Gary, called and sworn as a witness in behalf of the plaintiff-relator, testified in substance as follows:

I am the head auditor of the Municipal Finance Commission, since the creation of the Commission under the Act. I am familiar with the work of the Commission with respect to the School District of Runnemede.

The outstanding bonded indebtedness of the defendant, Board of Education of Runnemede is: Total bonds outstanding as of December 31, 1935, were $171,000, of which $28,600 were in default. The interest in default up to December 1, 1935, was $37,054.19. They are all serial bonds.

The total Borough of Runnemede bonds, as distinguished from the School debt, as of December 31, 1935, was $217,000, of which $78,000 were in default. That means they are past due as to principal. The interest due on December 31, 1935, was $40,997.91. These are all serial bonds. You will have to add the two together to get the total of the combined school district and municipality.

As of December 31, 1935, the total owed on state taxes was $5,345.56; county taxes, $28,108.96. The state and county taxes have been reduced $7,479.63 between January

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* (See narrative statement of Chester Township record infra, Exh. —, fol. —.)

1st and March 31st of this year. Part of that was reduced with Camden County scrip.

[fol. 175] The first default on the Board of Education bonds as to principal was June 1, 1931. The same date as to interest. Payments have been made to bondholders on these obligations since that date, in the school district. I do not have the last date, but I can tell you generally that it was in the latter part of 1933 as a result of some litigation of the Woodmen of the World, or threatened litigation—apparently the relator in this case. Up to the end of 1933 they had some sort of a compromise settlement on the past due bonds. I could get that information for you. I do not specifically have what that settlement was. Since 1933 nothing has been paid to bondholders for principal or interest. The settlement was made exclusively with the Woodmen of the World. The general bonds were not brought up to a parity with the Woodmen of the World at that time. There are some bonds which are still in default from 1931.

The date of the borough's first default was, for both principal and interest, June 1, 1932. That is the last date of payment to borough bondholders, with the exception, of course, of the bonds that were purchased through a broker, —purchased by the municipality.

The Municipal Finance Commission was called into Runnemede in May, 1934, and has been functioning there ever since.

The ratables and tax rate per hundred from 1932 to 1936, inclusive, were:

	Ratables	Tax Rate per hundred
1932	$2,079,229	$4.68
1933	1,873,248	5.60
1934	1,844,812	5.42
1935	1,797,752	5.76
1936	1,790,000	5.66 estimated.

The properties are assessed at approximately 100%. I do not know whether it is otherwise. I cannot say other than the fact that it is 100%, because I have never made a study [fol. 176] of it. The best I can say is that I believe they are living up to the Constitution. My attention has not been called to any contrary situation. There are practically

no appeals in the Borough of Runnemede. The people seem to be pretty well satisfied. There are a number of municipalities assessed on a 100% basis and it can reasonably be proven they are, from recent sales. I have no first hand knowledge myself. The total tax levy for those years was, for borough and school district, showing amounts levied for debt service:

Year	Borough Budget	Borough Debt Levy	School Budget	School Fiscal Year	School Debt Levy
1932.....	$97,357.05	$30,936.89	$49,018.81	7/1/31-6/30/32	$21,347.8
1933.....	103,027.01	36,747.34	47,915.02	7/1/32-6/30/33	16,518.8
1934.....	99,744.35	30,013.23	44,957.85	7/1/33-6/30/34	15,717.8
1935.....	103,391.77	18,853.73	48,781.00	7/1/34-6/30/35	15,337.8
1936 est....	101,330.60	15,212.50	44,777.34	7/1/35-6/30/36	16,335.0
				7/1/36-6/30/37	15,445.0

In each cash the full statutory levy for debt service was made covering mandatory requirements. Bonds were provided for at the contracted maturing amounts and interest at the contracted rate. I might say that both in the municipality and the school district prior to the Municipal Finance Commission coming in that they did not provide for interest on defaulted bonds. However, as soon as we had control of making up the budgets we did put the interest in at the contract rate on the defaulted bonds. I could illustrate it this way. Suppose in 1933, the total outstanding bonds would be $300,000 and $10,000 of bonds had fallen due during that year. In 1934 they would only compute the interest on $290,000 of bonds, but when we came in we put in the interest on what would be $300,000 at the contract rate. We have picked up and put in the next budget the interest which had been left out by the borough in the preceding year. We have at the present time reserves to cover defaulted interest, 100% reserved appropriations. We have reserves covering defaulted principal.

[fol. 177] I do not know why bondholders were not paid before they came in our hands, but since then it has been the non-collection of taxes. We have had trouble with that municipality to get them to hold a tax sale.

I do not think I have the information as to when the last tax sale was held in Runnemede. The analyses I have here show there were considerable transfers to liens in the year 1931. Now, they could not transfer to liens without a tax sale, so it must have been held in that year. There has not been a tax sale since. The Municipal Finance Commission has gone on record instructing the municipality to hold a tax sale forthwith at least two or three times to my

knowledge. I do not have the dates here. They would be in the minutes of the Municipal Finance Commission relating to Runnemede. We have one set of minutes covering both Runnemede borough and Runnemede school district. It is my understanding that a tax sale is being prepared and a tentative date the latter part of April has been set for the actual holding of that tax sale. A tax sale was not had in 1934 when the Commission went in because the Commission felt that it did not have the power to force the tax collector to hold the sale. The same condition prevailed in 1935. And in 1936. There has, to my knowledge, been no change in the law on that point. We can order a tax sale but we cannot seem actually to get it. To my knowledge, we have no way of enforcing action on the part of the municipal officials to actually hold a tax sale.

A taxpayer can mandamus a tax collector to hold a tax sale, which was done in Runnemede, I understand, back in 1930 or 1931, and that was the only reason they did hold the sale then. I do not think the Municipal Finance Commission has any power to order a tax sale.

[fol. 178] The file which you show me, ~~which~~ you say you obtained from Mr. Dimock, is the record of the minutes of the Municipal Finance Commission so far as it relates to Runnemede from the time that the Commission entered into operation in the municipality.

"Mr. Vanderbilt: May I offer it in evidence?

The Court: It may be marked.

(Minutes of the Municipal Finance Commission received in evidence and marked Exhibit R-1.)".

There were at least two or three different times when the Municipal Finance Commission demanded that the borough hold a tax sale. I will fill those dates in later.

"Mr. Vanderbilt: May we have a place left in the record to fill them in, your Honor?

The Court: All right."

June 8, 1934.
April 12, 1935.
November 1, 1935.
March 13, 1936.

Specifically what do you mean when you say that the Commission has been forced to use some pretty harsh language in dealing with this borough? As to item 7, of

the minutes of the Commission in and for Runnemede, a
the meeting of March 13, 1936, that was made at my re
quest.* I was present at that meeting, was I not? We hav
had other occasions in other municipalities where thing
have come out where they have used pretty harsh languag

This is the only municipality we have in which there hav
been no tax sales held for five years. In the fall of 193
shortly after we made one of these requests, the tax co
lector did get busy and send out notices to all creditor
He temporarily set a date for advertising. He had proof
run of the ad. I mean he sent notices to all taxpayer
but he never actually held a tax sale. It did have the resu
of increasing the tax collections somewhat and most a
[fol. 179] that money was used to pay delinquent state an
county taxes, but then the beginning of 1935 that munic
pality's politics changed and since that time we have not ha
the cooperation we had under the former regime. It is co
rect that the former regime was simply going through th
preamble of a tax sale and not actually holding one, and th
present regime is not even going through the preambles.

I can give you a schedule, I think, of tax collections fo
the years 1932 to 1933, with separation of current and d
linquent and total taxes. That paper is a refunding pla
for the borough of Runnemede and the School distric
bearing date of March 1, 1936, but actually submitted to th
relator for the first time this morning. It was prepared b
me and my assistant, Mr. Hart. It has not been approve
by the borough nor the creditors.

"Mr. Vanderbilt: With the court's permission, we wi
just mark this schedule in evidence. * * *

The Court: * * * That may be marked R-2.

(Schedule received and marked Exhibit R-2.)"

It is my opinion that there is no chance, with the recor
we have staring us in the face from 1931 to date, of th
bondholders obtaining any payment this year other tha
by a refunding plan. The fundamental reason for the d
fault is that the township authorities have not performe
their statutory duties with respect to collecting taxes an
enforcing the collection of taxes, by holding sales and pe
fecting liens and foreclosing and the like. I do not believ
that if the borough officials did their duty in accordan

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* This item will be found set out at folios — to —.

with what appears in the minutes of the Municipal Finance Commission that this municipality could pull itself out of its difficulties, because the collection history for the past few years shows that we have collected only 70 to 75% of their total levy.

[fol. 180] In the case of Runnemede most of their trouble is caused by overdevelopment. A large part of your bonds are on improvements for streets, sidewalks, curbs and gutters and they are grown up with weeds and you can hardly find them today. It is apparent that real estate dealers came along there during the boom period and laid out a lot of developments and then induced the borough to put improvements on them in the form of streets, curbs and sidewalks. When there were no buildings. And subsequently they have not been able to sell any property. However, it increased their assessed valuations, but they have not subsequently been able to collect taxes on those.

There are approximately 726 buildings. All told, there are 5,692 lots and 635 acres. That 635 are plots assessed on an acreage basis. That is a large number of lots for an area of only five square miles compared with surrounding communities.

"The Court: I suppo*rt* that is the difficulty. It would not do any good to hold a sale of lots. At least, I would not think so."

The trouble is, we have to spend so much money to foreclose. A lot of those are held by individual owners, and the cost of foreclosure added to present delinquency, you are throwing money away. For instance, a lot worth $75 or $100 probably has $50 or $100 against it, and the legal fees are so great for foreclosure costs that you cannot send the money after that. We were able to get one property owner here to turn over some 900 properties for a cost of about $450. It has to be done more through a spirit of cooperation of the tax-payers.

[fol. 181] I can give you the 1935 abstract of ratables:

Land	$500,338	
Improvements	1,201,972	
Second class railroad	2,008	
Personal property	181,165	
	—87,725	Less deductions alowed by law.
	1,797,000	Total ratable.

The percentage of tax collections was:

1927	57%
1933	32%
1934	42%
1935	42%

Those percentages, of course, are the percentage of collection of the current year, levied during the current year.

We made considerable progress in the latter part of 1934, through a friendly governing body and their solicitor there, we were able to inspire confidence among the taxpayers. Collections increased considerably and last year, of course, as I say they dropped off tremendously because of non-cooperation of the municipality with the Finance Commission. I might say that the school district has been very cooperative with the Finance Commission. They have done everything they possibly could in preparing their budget which was the first year we helped to prepare the school budget in Runnemede. They tried to do everything they could to get the budget down to a minimum.

Of course the school district has nothing at all to do with the collection of taxes. It has no taxing power of its own. The municipality has no reserve funds set up, because it never had any compromise settlement on a cash basis.

I have both the end-of-the-year and the present-time amount of cash on hand, both current funds and assessment funds and sinking fund. As of March 31st:

[fol. 182] Current account	$1,251.71
Delinquent tax acct.	563.37
Tax title lien acct.	1,324.23
E. I. Bond account	68.50
Trust account	1,748.33
Dog trust account	173.47
Board of Education bal.	128.91
Total	$5,228.61

I cannot tell you just for the moment what the "E. I. bond account" is. It is only a small fund that they are keeping segregated. The "trust account" is where money collected from assessments is held for a special benefit.

There was quite a little money diverted from the trust section to pay current operating expense in prior years. It can be dug out and gotten for you. It is one of the cus-

tomary practices of most municipalities. Of course, there is no provision for it under the statute. It is irregular and unauthorized. I can get that for you and let you have it later to go in the record. I can give it to you from the beginning of the borough without very much trouble. It was when they were incorporated. We have an analysis of it. Of course there has been none of that since the Finance Commission went in there. We stopped that practice as soon as we came in.

Neither the borough nor the school district owes money for operating expenses of prior years other than the current 1936 indebtedness. Current bills in both the school district and municipality are practically up to date, just normal unpaid bills which have not been rendered or something.

At the end of 1935 the municipality owed the school district $96,651.05 which was equivalent almost to two years levy of the school district. That indebtedness of the municipality to the school district has continued from year to year at least several years. Back at the beginning of 1927 the amount owed by the municipality to the school district was $12,574.45 and an analysis of that shows that each year [fol. 183] they pay over less than what the requirement was and they have been gradually increasing the amount due to the school district. They do give the school district enough to pay teachers' salaries and transportation expenses. In other words, they have paid everything practically except the bondholders. That *it* what it comes down to. There is no question that they have probably economized somewhat, too, as they have gone alone. To my knowledge the school district has never taken action to compel the borough to make payment to it.

I cannot speak prior to the Municipal Finance Commission, but which we came in there were quite a few bills of the school district that were delinquent and we had to make a temporary borrowing of over $5,000 to keep the schools open in the fall of 1934, and I know they have had a lot of trouble getting along the same way the municipality did because of the non-collection of taxes. It goes back to that. They were not collecting the taxes, and therefore, it was very hard for them to pay their bills.

"The Court: The amount that the borough has not paid the school district about equals the Board of Education debt service budget for 1931 to 1936."

There have been some bonds purchased by the municipality with its funds. $48,670 has been paid to retire $74,000 of bonds. Those bonds were all past due. I prepared a duplicate schedule here showing the detail of the make up of that, and I would like to say that there are only two or three bondholders in this municipality, and they were all purchased through brokers, as stated here, and the holder [fol. 184] of the bonds for whom the money was used was the only holder of the bonds purchased. I mean with the trust moneys, and he sold his past due bonds and so the brokers tell me as long as we got from a five to ten point spread for the past due bond he was willing to take bonds yet to become due of the same municipality, and I do happen to know that he purchased several other bonds of a municipality in the hands of the Finance Commission. In other words, to make that plain, he would let go of a past due bond at 63¢ as long as he could buy a bond coming due in the future for 53 to 58.

He was a very large holder of municipal bonds. He appears to be the largest holder of municipal bonds in the state of New Jersey, and holds bonds in practically every municipality in the hands of the Finance Commission and has been cooperating with us. At this instance he and the state are the only holders of bonds of the borough of Runnemede, as far as the borough is concerned. The bonds of the Board of Education to my knowledge are held by three parties. Woodmen of the World, the State, and a local resident of Runnemede. It is correct that from this schedule those purchases were in 1934 and 1935. There were none before that. All of those purchases were made after the Municipal Finance Commission came in. They were approved by the Municipal Finance Commission.

"Mr. Vanderbilt: May I have the statement as an exhibit?

(Statement received and marked Exhibit R-3)."

The Commission felt that this was not at all complicated because we had only two bondholders and all this was done with the knowledge and consent of the bondholders. The money could be used for no other purpose than to retire assessment bonds, and specifically that is what it was used [fol. 185] for. We could not take the money collected through assessments and pay that money over to the school district. It has to be held in trust, and the only purpose it

can be used for is to retire trust bonds. In other words, moneys which are obtained from assessment funds must always be used for the retirement of assessment bonds. Not only in Runnemede but everywhere. I would like to say that since the Finance Commission has been functioning in these municipalities we have held rigidly to that rule. We are governed by statutory laws, of course, that do not allow us to do anything different. We have accepted $62,507.01 worth of bonds for taxes. I do not have the break-down of that, of course. 1934 was $30,000., and 1935 was $32,507.01.

These bonds were accepted in payment of taxes with the approval of the Municipal Finance Commission, on the basis of past due bonds for taxes due prior to the year 1933. 1933 and subsequent taxes, plus interest accumulations, were paid in cash, and as the bonds were received no allowance was made to the taxpayer for any coupons attached to the bonds at the time of the surrender. In other words, we made the taxpayer pay interest in cash, but we allowed no interest for the bonds which were turned in. Each of these transactions was approved by the Municipal Finance Commission.

"The Court: That required, as I understand it, the payment of all taxes up to the date that the bonds were accepted."

Positively. If a taxpayer made a settlement we were insistent that he clear his property of every existing lien to the borough up to that date. And an examination of the records of those taxpayers who settled shows that they have been keeping their taxes paid up to date since then. In [fol. 186] other words, it got them out of a hole. They saw light in being able to settle their taxes. Most of these bonds, to my knowledge, were purchased from 63 to 70, and they got practically a 30% discount or a little better on their delinquent taxes, and that encouraged them to clear their property of a over-burdened lien.

School bonds were not accepted as well as borough bonds. As to whether that constitutes a preference and discrimination in favor of resident bondholders against non-resident bondholders, there were no non-resident bondholders here. As I said before in the municipality there were only two bondholders. As to whether it is a preference of the borough bondholders over the school district bondholders,

we did not have any control over the school district at all until last year, and then through an action of yours on another municipality we voluntarily stopped this bond settlement.

Yes, we controlled the borough in 1934 and 1935, but we stopped bond settlements last Fall. I might say that collections have fallen off somewhat since then. However, in this little survey I made a short time ago the people who did use bond settlements are keeping paid up to date.

Specifically, for the benefit of creditors, since it began to function in Runnemede, the Municipal Finance Commission has retired $136,507.01 of bonds, in the borough. They were held before retirement by individuals and the state. That is one individual and the state.

The amount was $62,507.01 for taxes. The resultant saving or the profit from the bonds purchased plus interest attached to coupons which were surrendered helped to build [fol. 187] up reserves against the non-collection of the taxes which are now on our books. When we went in there, there were no reserves against delinquent taxes—I will give you a little history here—when we sent in there, there were approximately $413,974.63 in total receivables in the form of taxes and assessments. There were absolutely no reserves against those. At the end of December 1935, we still had total reserves of $71,022.08, or the receivables are backed up by a 17% reserve. That means this, that if we have to take a loss of 17% on the outstanding receivables the future tax levies will not have to be effected by that amount. That is not in cash,—it is a book-keeping entry.

I might explain it this way. When you make profits on a bond purchase that would be surplus in an ordinary outside business. It would go into surplus as a profit. Now, instead of throwing that into surplus we put in a reserve against the non collection of those taxes some day. If we put it into surplus then the municipality would come along and appropriate that surplus to reduce a subsequent budget.

We were soon brought to realize the fact that we had to take a loss on eventual collection of taxes on some of this property. In fact, a large part of it. So we hurried to build reserves against that day. In other words, we are stopped from settling with bonds, so we have got to offer the taxpayer sooner or later some kind of a cash proposition to get him to come in and pay for those taxes and get-

him back in a taxpaying status. We cannot afford to pay these lawyers so much for foreclosure. The legislature will not give us a procedure to foreclose liens at a small cost. The old Martin Act had a limitation of time and cannot be availed of now. When you travel around you will find a lot of municipalities have a lot of those Martin Act tax liens still on their books.

[fol. 188] We have kept the municipal officers from increasing their budgets for operating expenses, of course, with the exception of the expenses necessary for the Finance Commission, and we have added to the budget for foreclosures with the idea that the foreclosing of properties and the subsequent sale of those properties would bring in money. In 1934 there were a number of foreclosures. One foreclosure of the Runnemede theatre was made where there were liens against it totalling approximately $15,000. That theatre has now been put into operation and we hope under the contract within the next couple of years to get a vary sizeable amount out of that theatre. The borough owns it now. It is right on the pike there. If you are familiar with this territory you will know that has been idle for a number of years and that is about the only real asset that the borough has. The others are simply buildings that cost from $1,500 up to as high as maybe $3,000 to build.

I cannot tell you how many foreclosures there have been in all. There were at least in the neighborhood of twenty, in 1934. None in 1935, though we provided a large budget appropriation for that. The township authorities were scrapping among themselves there. I cannot say specifically why they did not foreclose. There were budget appropriations provided and we tried to encourage them to go ahead with the work. They did not do it. I do not know that we went on record specifically to foreclose properties, although that was part of my duties travelling around for the Commission. I urged them to do it. They did not do it.

[fol. 189] There was $1,500. provided in this budget of Runnemede for the Municipal Finance Commission. There was $1,200. last year. There may be a little more than that as a result of this litigation which is pending here at this time.

The borough has adopted a budget for 1936, but it differs in a few instances in the operating expenses from that which has been adopted by the Municipal Finance Commission. The debt service in both budgets is the same, however. The

main point of difference is that the municipality has wanted to appropriate some surplus which was found upon audit not to exist, they wanted to appropriate that surplus to reduce the amount to be raised by taxation. A subsequent action by the Municipal Finance Commission has been that they have ordered the State Auditor to certify to the county board our budget, which has been done. It is therefore the budget of the Municipal Finance Commission which will prevail this year rather than the one adopted by the municipality, both as to county tax rate and the municipal tax rate.

Debt service of $15,202.50 has been budgeted for this year. That includes interest at the contract rate on the outstanding bonds, plus the maturities of bonds falling due this year. For the school district, $8,300. has been budgeted for principal on bonds, and $7,055. for interest on bonds. That is the total I gave before of $15,455. That covers all current interest and all maturities of the school district. Provision has been regularly made in the school district for all of their past due principal, from year to year. Prior to this year's budget there was $28,600. provided in previous budgets which was not paid.

On cross-examination by Mr. Dimock the witness testified further in substance as follows:

Runnemede is located about six or seven miles east of Camden on the Black Horse Pike. It is one of the five municipalities that split off from Centre Township in 1926. The area is about five square miles; the population in 1930 [fol. 190] was 2,436. There are sidewalks and curbs. The street improvements are all cinder type. They are not really permanent streets as we commonly know them. These municipal improvements connect groups of small houses. There are several what you would call small settlements within the borough. It is by no means solidly built up. The houses are of the semi-bungalow type, small houses that do not cost a greate deal to build. There is a very small business district, about a block long, I should say. There are about half a dozen stores. It is built on both sides of the Black Horse Pike.

There is some assessed valuation placed on all of that property. In its present condition not all of it is salable property. Some of it is worth but very little. There are

5478 unimproved properties which have assessed valuations of $1,202,345: The tax delinquency against those properties is $360,682.[illegible]. The unimproved property is property on which there are no buildings. It is just vacant land. It may or may not have curbs and sidewalks and gutters and so forth.

$84,147.78 is due in tax assessments and delinquencies on improved property on which there are no liens held by the municipality. There are 1182 parcels. The average delinquency for each parcel is $71.19. There are 259 improved properties where the municipality does hold liens, and the delinquency is $53,799.87. That makes a total delinquency against improved property of $137,947.65.

The unimproved property without any liens is 1507 properties with delinquencies of $30,445.63. The unimproved property in liens numbers 2530 parcels. The delinquency against them is $192,289.65, or 109% of the assessed valuations, which assessed valuations are $175,765. Now that makes a total delinquency against those unimproved properties of $222,735.28.

The percentage of delinquency to assessed valuations upon the other three classifications is: first, of improved property not in liens, 10%. Improved property in liens, [fol. 191] 42%. Unimproved property not in liens, 42%. So you see the great bulk of our delinquecy there is tied up against unimproved property not in liens. We have delinquencies there of $300.000. and some odd dollars, and the delinquencies against the unimproved property in liens is $192,000 and some odd dollars. Now, to collect money on that in future we will probably have to compromise with the taxpayers to get them to pay their taxes. They do not have the heart to send money after the property in the present status. When we began to compromise we began to take away some of the equity of the bondholders, whereas when we used bond settlements we washed an asset against a liability, but here we cannot do it.

I spoke of a taxpayer deeding some of that property which was in liens to the municipality for $450., 900 lots. That was 50¢ a lot. The improvements that I have spoken of, the sidewalks, curbs and gutters, were paid for out of the bond issues. Some of those bonds are still outstanding now.

By Mr. Dimock:

"Q. Are all of the bonds and notes of the municipality and the Board of Education, bonds and notes which were issued by the present municipality to the Board of Education?

Mr. Vanderbilt: I object as immaterial."

They did take over $33,000. of these from Centre Township. There were some other bonds taken over from Centre Township which were paid. They did not amount to a very great deal. Of the $33,000. there are still outstanding $24,000. of those bonds. That is Centre Township's Board of Education. The borough did take over some of the debt of Centre Township as distinguished from the school district. I do not have that information before me just how much that was. There is none outstanding unless it has been converted into some other form of paper.

As to the per capita debt figured upon the 1930 census, I am going to give you the per capita debt on the debt to be refunded if that is satisfactory. That differs from what [fol. 192] is known as the gross debt. The figure that I will give you is the accumulation of interest right up to the end of the year, whereas the gross debt statement prepared under the Act has no interfund balances that might be due, and it has interest only to the last coupon date. The figure which I will give you is what the municipality owes to outside creditors as of December 31, 1935, with all interest accrued to that date, and without any bookkeeping credits. It is gross, yes. The municipal per capita debt is $164.24. That is approximately 23% of the assessed valuation as of December 31, 1935. These are all gross figures.

With the debt of the school district added the per capita debt is $251.97, or 34% of the assessed valuation, as of December 31, 1935, because there again we have the accumulated interest added right down to the last day of the year.

On December 31, 1935, the defaulted principal of the municipality was $78,000. The defaulted principal of the school district was $28,600. That is a total of $106,000. The defaulted interest of the municipality was $40,997.91. The defaulted interest of the school district was $37,054.19. The total of these was $78,052.10.

The annual requirement for interest on bonds at the coupon rate for the borough is $11,272.50., and for the school district $7,055.

Formerly we could not force a tax sale, but on June 25, 1935, the legislature passed an amendment to our Act, section 3 of Chapter 292, Laws of 1935, where I understand that if a tax collector does not do his duty we can bring him up on charges and give him notice and then replace him by an officer that is appointed with our approval. Since the passage of that act we have had the promise of the holding of a tax sale on April 22d of this year. I understand that notices have been sent to all taxpayers. There has been an increase in tax collections since those notices have gone out, but I am not prepared to state just what that amount has been. The Commission is prepared to enforce that order.

[fol. 193] Ways have been adopted for making it easier for taxpayers to pay, such as the receipt of taxes in installments. The tax collector has quite a large installment record. The people who pay taxes in this municipality are in the most employed in Camden shipbuilding and allied industries, and they do not receive any very large salaries, and he has a very large number of accounts that pay from $1 a week up to wipe off their tax delinquencies. He tries to make arrangements with each party who wants to pay on installments to pay about 1½ years taxes in one. That is the minimum he will allow them to pay on an installment basis, and they are gradually getting caught up. Under the law, the collector doesn't have to accept any installment payments, but he takes care of those which means a tremendous amount of extra work for him. I think I gave you the cash figure that showed that we had a cash balance of $563.37 in that account, and just to show you, between January 1st and March 31, 1936, he collected $2,686.07 from that source. And I would say he had to make several hundred entries to collect that much money, because I have looked over some of those cards and they are pretty small amounts. That is the present tax collector. We are receiving full cooperation from him.

I have made a record of the comparison of appropriations made by the municipality for various years. It was incorporated in 1926, but of course they did not have any budget that year, and this statement covers taxes in all the budgets from the first year of their operations, the first full year (1927). The total levy reached a peak of $103,000 in 1933. However, it approached that figure in 1931, when

a total levy of $100,628.26 was made. The second year its existence the total levy was $83,000. It jumped $30,0 in the second year of its existence. So we cannot say th the difficulties of this municipality are due to extravagan in the boom years. They have been very fair and consiste in their levy and when you look at their ratables over period of years they were not much different in the boo period and they have not dropped greatly since. Rig [fol. 194] after they were first incorporated there was period when tax collections were better than they have bee but it dropped off very quickly. It began to drop off th following year (1927) and between 1927 and 1933 it droppe from 57 to 32%, but it has been a constant drop each yea down to that low of 32%.

"By Mr. Dimock:

Q. Well, now, assuming there was an aggressive campaign of tax sales, tax foreclosures, what percentage of current levy is collectible in Runnemede?

Mr. Vanderbilt: I object. That is matter of speculation——

Mr. Dimock: I am asking for the witness' opinion."

Well, the record seems to indicate that the current collections can be increased some little, but that we will not -ventually collect much more than 70% of each levy until we adjust some of these delinquencies on that large number of vacant lots. I am basing that upon the ability of the property itself to respond. That is the real situation. The records indicate that we are collecting in the past two or three years in the end about 70% of the levy, and I have made a forecast of what we should expect in a refinancing plan. When I spoke of 57% and 32% I meant what was collected during the then current year.

That is not the total collections. I might qualify it by adding the percentage collected on the one year old and two years old taxes. In 1933, for instance, 32% in the year levied, 23% in the following year, and 7% last year. That makes total collections 62% to date. That corresponding percentage of the total levy ultimately collected went steadily downward from approximately 90% in 1927 to about 57% in 1932. Since 1932 the trend has been upward. The average has been somewhere about 65 to 70 probably.

I base a refinancing plan on about 70%, which I thought was a fair figure, not knowing what we would be able to do on the delinquent properties.

I said that in the proposed budget for 1936 there was an [fol. 195] item directly applicable to debt service of the borough of $15,212.50, and there is an item of $15,455 applicable to debt service for the school bonds.

"Mr. Dimock: I should like to offer in evidence the proposed budget as approved by the Municipal Finance Commission of the borough of Runnemede for 1936. * * *

The Court: It may be marked in evidence.

(Budget received and marked Exhibit Res. -1.)

Mr. Dimock: And I would like to offer in evidence the budget of the school district for the year 1936.

(Budget of school district received and marked Exhibit Res. -2.)"

Assuming that budget was adopted, I gave you a tax rate of about $5.66 for 1936.

"By Mr. Dimock:

Q. Now, assuming that the relator's judgment of $21,776.21 were added to the budget for 1936, what would the tax rate be?

Mr. Vanderbilt: I object to that, if the court please. That is immaterial. * * *

The Court: * * * I think I will take it—if that was actually added to it."

The tax rate would be $6.86 upon each $100 of assessed valuation.

"By Mr. Dimock:

Q. For all creditors with accrued claims which rank ratably with the relators, what would be the tax rate?

Mr. Vanderbilt: I object to that.

The Court: There is no other proceeding pending in any court along that line, is there?

Mr. Dimock: No, your Honor.

The Court: Then I think I must sustain the objection to that.

Mr. Dimock: I would like to offer in evidence a certified copy of the petition of the borough of Runnemede to the Honorable Frank Lloyd, for the intervention of the Munici- [fol. 196] pal Finance Commission to the order of the Supreme Court directing the functioning of the Municipal Finance Commission in the borough entered upon that petition as copied in the minutes of the Municipal Finance Commission on May 18, 1934.

The Court: It may be marked.

(Certified copy of petition received in evidence and marked Exhibit Res. -3.)"

I have prepared a table showing for the years 1925 to 1935, inclusive, the total ratables, the tax rate, the tax levy, the levies for debt service, tax collections, income from all sources, requirements of the municipality accrued, the gross debt excluding the school debt, and the school debt. That is the table annexed to the answer in this proceeding, called Exhibit A.

"Mr. Dimock: I will offer that in evidence.

The Court: Are you offering in evidence the original?

Mr. Dimock: As a matter of fact, I am not because there are three clerical errors in it which have been corrected on this copy, so I will supply the court with an accurate one.

The Court: Then it is a copy of Exhibit A which you are offering and having marked.

Mr. Dimock: Yes.

(Exhibit A received and marked Exhibit Res. -4.)"

It is correct that those figures are given as of December 31st in the years noted on it, with the exception of the school debt, and that is given as of June 30th of the year mentioned, with one further exception,—the school district debt opposite the year 1936 is as of January 1st. The other remaining figures of school debt are as of June 30th.

I have prepared statements of the outstanding debt to bondholders of the borough and of the Board of Education existing as of December 31, 1935.

"Mr. Dimock: I offer those in evidence, first the borough and then the Board of Education.

[fol. 197] (Received and marked in evidence Exhibits Res. -5 and Res. -6.)"

Where bonds were retired by purchase at less than par, the state did not sell at less than par to the municipality. The only bonds that were purchases were from this outside holder, this individual.

On redirect examination by Mr. Vanderbilt the witness testified further as follows, in substance:

After the law was enacted last July giving the Commission power to remove a tax collector who did not do his duty, the tax collector at Runnemede was not removed, but a tax collector was elected last fall there. There was one there in July, he was not removed. After the law was passed he was given no official warning in writing by the Commission that if he did not proceed promptly he would be removed. We will find it in the minutes somewhere that since this tax collector has been elected he has tried to cooperate with us. I have told him personally that if he did not have a tax sale he would be fired pursuant to the act, but it has not been on record. There has been no official action by the Municipal Finance Commission to that effect. They have not fired any tax collector in this or any other municipality. There has been an official advertisement of a tax sale in the papers. We can produce evidence of that.

"Mr. Vanderbilt: That is all. We rest."

[fol. 198] EXHIBIT RES. 1.

Borough of Runnemede

1936 Budget

Surplus Revenue Appropriated	None.
Miscellaneous Revenues:	
Licenses and Permits	$1,400.00
Interest on Delinquent Taxes	4,000.00
Interest on Assessments	1,500.00
Franchise Tax	5,000.00
Gross Receipts Tax	700.00
Tax Searches	100.00
Refund on Water Mains	1,239.36
Fines and Costs	200.00
5% Bus Gross Receipts Tax	150.00
Dog Licenses	362.55
	14,651.91
Amount to be Raised by Taxation	32,853.26
	$47,505.17

Appropriation:

Administrative and Executive	$1,350.00
Assessment and Collection of Taxes	2,775.00
Department of Finance	90.00
Police	3,520.00
Fire	1,350.00
Fire Hydrant Service	2,410.00
Health and Charities	1,355.00
Public Roads	3,075.00
Street Lighting	4,000.00
Garbage Collection	100.00
Elections	200.00
Insurance	1,150.00
Telephones	280.00
Contingent	100.00
Dog License Expenses	88.00
N. J. League of Municipalities	35.00
Expense of Tax Sale and Foreclosure	900.00
Municipal Finance Commission	1,500.00
Audit	750.00

W. P. A. Projects	750.00
Debt Service	15,212.50
Deferred Charges	6,398.67
Building Inspector	100.00
Water Rent—Theatre	16.00
	$47,505.17

[fol. 199] EXHIBIT RES. 2

Borough of Runnemede

School District Budget for School Year 1936-37

Current Expenses	$52,443.00
Repairs	920.00
Bonds and Interest at Contract Rates	15,455.00
Total	$68,818.00
Less Revenue Anticipated	24,040.66
Net Amount to be Raised	$44,777.34

[fol. 200]

EXHIBIT R-3

Borough of Runnemede

Bonds Purchased by Borough During

1934

Purchased From	Bond Title		Issue Amount	Date Purchased	Par Value	Amount Paid	Bond Numbers
Trust Account:							
M. M. Freeman & Co.	Temp.	Impt.	$159,000	10/25/34	$20,000	$13,025	90 to 109 Inc.
Leon Guest & Co.	do	do	do	do	35,000	23,675	6 to 40 do
M. M. Freeman & Co.	do	do	47,000	11/ 7/34	3,000	1,890	3 to 5 do
Leon Guest & Co.	do	do	159,000	11/27/34	5,000	3,150	41 to 45 do
Leon Guest & Co.	do	do	do	12/13/34	3,000	1,890	48 to 50 do
Total					$66,000	$43,630	

1935

Trust Account:							
M. M. Freeman & Co.	Temp.	Impt.	$159,000	1/22/35	$2,000	$1,260	54 & 56
do	do	do	do	2/11/35	2,000	1,260	59 & 60
do	do	do	do	3/25/35	2,000	1,260	62 & 63
do	do	do	do	4/ 4/35	1,000	630	67
	do	do	do	6/ 6/35	1,000	630	70
Total					$8,000	$5,040	

[fol. 201]

EXHIBIT RES.-4

Exhibit A

	* Total Ratables	Tax Rate	Tax Levies	Levies for Debt Service	Current Tax Collections
1926	$1,070,460.00	$....	$.....	$.....	$.....
1927	1,240,747.00	3.65	53,333.03	8,720.50	30,443.31
1928	1,420,803.00	4.60	83,543.14	18,459.13	44,033.15
1929	1,717,017.33	4.37	87,741.44	27,080.44	48,173.03
1930	1,915,373.33	4.27	88,108.94	30,813.40	40,175.47
1931	1,999,632.00	4.78	100,688.26	25,596.50	37,472.87
1932	2,011,052.00	4.68	97,357.05	30,936.89	33,526.21
1933	1,926,195.00	5.60	103,027.01	36,747.34	32,821.75
1934	1,833,768.00	5.42	99,744.35	30,013.23	41,479.01
1935	1,737,440.00	5.76	103,391.77	18,853.73	43,871.29

	Income from All Sources	Requirements Accrued	Gross Debt (excluding school)	School Debt
1926	.....	.....	$320,470.30	.....
1927	$79,221.39	$60,672.03	419,562.19	$38,833.03
1928	125,698.11	101,964.55	488,808.24	122,743.84
1929	130,576.79	109,884.35	480,254.03	110,350.00
1930	100,214.27	218,317.47	454,962.73	181,200.00
1931	116,577.60	134,311.89	496,742.39	184,645.00
1932	79,811.20	276,028.06	450,232.41	176,097.50
1933	89,262.32	133,636.61	488,508.00	174,097.50
1934	128,538.78	126,395.24	364,020.57	171,800.00
1935	105,601.39	127,371.99	373,562.59	171,800.00

* Average of three preceding years.

(Here follow two pasters, side folios 202 and 203)

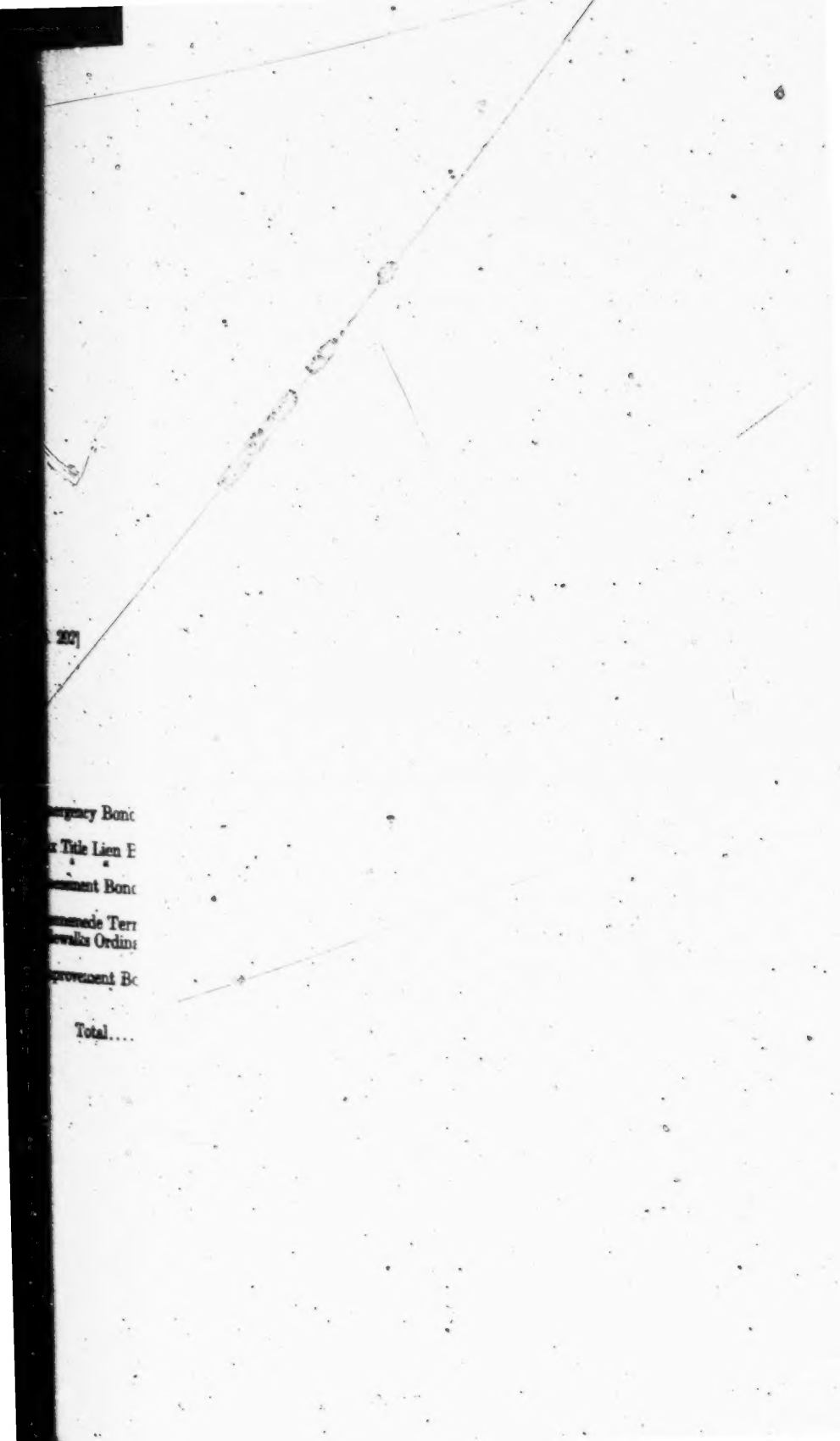

EXHIBIT RES.-5

Borough of Runnemede

Character of Bonded Debt and Amount of Principal and Interest in Default December 31, 1935

	Amount of Issue	Date of Issue	Date of Maturities	Amount of Each Maturity	Int. Rate	Principal Outstanding December 31, 1935			Last Interest Payment	Interest in Default (To Last Coupon Date)	Interest to End of Year 1935	Total Interest in Default Dec. 31-1935
						In Default	Not Yet Due	Total				
ary Bonds	$29,000.00	6/1/32	6/1/33-39	$3,000.00	5%	$6,000.00	$12,000.00	$26,000.00	6/1/32	$4,550.00	$108.33	$4,658.33
			6/1/40-41	4,000.00			8,000.00					
le Lien Bonds	27,000.00	6/1/32	6/1/33-41	3,000.00	5	2,000.00	18,000.00	20,000.00	6/1/32	3,500.00	83.33	3,583.33
ent Bonds	36,000.00	6/1/32	6/1/33-41	4,000.00	5	4,000.00	24,000.00	28,000.00	6/1/32	4,900.00	116.67	5,016.67
	49,000.00	7/1/30	7/1/33-35	5,000.00	5¼	15,000.00		39,000.00	7/1/32	6,142.50	853.13	6,995.63
			7/1/36-39	6,000.00			24,000.00					
ede Terrace Sidewalks	47,000.00	11/1/26	11/1/32		5½	26,000.00		26,000.00	5/1/32	5,005.00	238.32	5,243.32
ks Ordinance #5	159,000.00	9/1/26	9/1/32	109,000.00	5¼	19,000.00		19,000.00)	3/1/32	12,678.75	1,207.50	13,886.25
			9/1/36	50,000.00			50,000.00	50,000.00)				
ement Bonds—1930	13,000.00	7/1/30	7/1/33-35	2,000.00	5¼	6,000.00	3,000.00	9,000.00	7/1/32	1,417.50	196.88	1,614.38
			7/1/36-38	1,000.00								
Total						$78,000.00	$139,000.00	$217,000.00		$38,193.75	$2,804.16	$40,997.91

The Character of the Bonded Debt of the School District and the Amount of Principal and Interest in Default as at December 31, 1935 is shown in the following:

EXHIBIT RES. 6

School District of Runnemede

Character of Bonded Debt and Amount of Principal and Interest in Default December 31, 1935

	Amount of Original Issue	Date of Issue	Date of Maturities	Amount of Each Maturity	Int. Rate	Principal Outstanding December 31, 1935			Date of Last Interest Payment	Interest in Default (To Last Coupon Date)	Interest to End of Year	Total Interest in Default Dec. 31, 1935
						In Default	Not Yet Due	Total				
Runnemede Alterations	$4,000.00	9/ 8/25	6/ 1/32-33	$500.00 $1,000 1932-53	5%	$1,000.00		$1,000.00	12/ 1/31	$200.00	$4.17	$204.17
Haddon 1922 Centre Twp	33,000.00	4/ 1/22	6/ 1/32-52	$500 1947-52	5½%	4,000.00	$20,000.00	24,000.00	6/ 1/31	5,940.00	110.00	6,050.00
Runnemede Addition	8,000.00	7/15/18	1/15/32-38	$400.00	5%	1,600.00	1,200.00	2,800.00	7/15/31	560.00	64.19	624.19
School Addition	84,000.00	6/1/27	6/ 1/32-46	1932-36 $4,000 1937-45 $5,000 1946 $3,000	5%	16,000.00	52,000.00	68,000.00	12/ 1/31	13,600.00	283.33	13,883.33
School Addition	78,000.00	6/ 1/30	6/ 1/33-59	1933-37 $2,000 1938-59 $3,000	5¼%	6,000.00	70,000.000	76,000.00	12/ 1/31	15,960.00	332.50	16,292.50
Total						$28,600.00	$143,200.00	$171,800.00		$36,260.00	$794.19	$37,054.19

Note—See Schedule "B" for Detail of Bonds and Notes Outstanding

[fol. 204] IN UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

In Mandamus

UNITED STATES OF AMERICA ex rel. NORFOLK AND WESTERN RAILWAY CO., Plaintiff,

vs.

TOWNSHIP OF CHESTER et al.

Narrative Reduction of Portion of Transcript of Record

Statement of Evidence

Proceedings on return of Order to Show Cause for Writ of Mandamus before Hon. John Boyd Avis at Camden, New Jersey, March 12, 1936.

Appearances:

Arthur T. Vanderbilt, Esq., John B. Dawson, Esq., for the plaintiff-relator.

William A. Stevens, Esq., Hawkins, Delafield and Longfellow, Esqs., by Edward Dimock, Esq., for the Municipal Finance Commission.

Powell and Parker, Esqs., by Albert Mackay, Esq., for the municipality.

"Mr. Dimock: If your Honor please, before the taking of testimony may I file with your Honor a petition to intervene on behalf of the Municipal Finance Commission of the state of New Jersey. This municipality is one of those in which the Municipal Finance Commission is functioning, and the purpose of the proceedings is to add to the municipal budget and to collect by way of assessment of taxation a judgment which the relator has obtained before you——

The Court: Is there any objection, Mr. Vanderbilt?

Mr. Vanderbilt: Yes, your Honor. We take the position that there are only two parties to this litigation, the relator, the judgment creditor, and the defendant township. * * *

The Court: All right. I think we ought to admit the petitioner, the Municipal Finance Commission, to appear in [fol. 205] this case as an intervening defendant representing, of course, the interest of the municipality in accordance

with the state statute which gives them the right, as I understand it, to take over the operation of municipal affairs. So an order will be made admitting them for that purpose, and you may have an exception, Mr. Vanderbilt.

Plaintiff prays an exception which is hereby allowed and sealed accordingly.

"(Sealed.)" * * *.

FRANK L. GARY, called and sworn as a witness in behalf of the plaintiff-relator, testified in part as follows, upon direct examination by Mr. Vanderbilt:

The Municipal Finance Commission in certain cases in municipalities into which they have gone, have paid out funds without a general new refunding agreement consented to by substantially all the creditors. This was in North Bergen and Lavalette. In Avalon we kept our interest paid up to date for quite awhile. * * *.

The Municipal Finance Commission is made up of the Attorney General, the Tax Commissioner and the State Auditor. Mr. Darby very seldom ever misses a meeting except through sickness. Mr. Martin attends very faithfully, and Mr. Backes, who is the Attorney-General's designee on the Commission, is invariably present. The Municipal Finance Commission functions in twelve municipalities. They meet regularly once a week for any municipalities that may have business. We have from seven to eight meetings, I would say, a week on an average. It takes one day a week. Practically a full day.

[fol. 206] All of the eight meetings, or whatever may be necessary to take care of these twelve municipalities, are held on this one day. We meet on one municipality and adjourn that and then meet on another for all business that may be before the Commission. * * *

Q. Now, has the Municipal Finance Commission in any of the municipalities in which it has operated ever started any suits for the benefit of creditors?

A. Not to my knowledge.

As to whether there has been any general refunding in any of the twelve municipalities under the control of the Municipal Finance Commission, in Manville complete refunding was done and in Lavalette we have had temporary refunding every year and kept them completely out of de-

fault. Of course, in North Bergen a temporary refunding was gone into which later fell through. It was hoped that the North Bergen refunding would be permanent. Thirty year bonds were issued looking forward to a permanent organization. The first default occurred a year later. They paid one coupon, and then defaulted.

I do not now remember what the size of the Manville refunding was. It was large for them. I will say approximately $150,000. In Lavalette it has been a matter of annual refunding of temporary indebtedness. The creditors have worked very closely with us there, and they have not desired a permanent refunding until the municipality has done its utmost to straighten out its taxes and so forth. There is full cooperation there. In addition to the one interest payment under the old refunding of North Bergen, and the payment of interest on temporary obligations at Lavalette, in North Bergen we paid over $3,000,000 to the creditors and have cash on hand of over $2,000,000 at the present time for the benefit of all creditors. We are posi- [fol. 207] tively very reluctant to let go of that cash, unless all creditors get together and agree.

When we went into North Bergen in July of 1931, there were considerable defaults. Those were all caught up to date with the exception of the temporary paper, and in the fall of that year a one year temporary issue of over $8,000,000 was gotten out. We kept the interest paid up on all that temporary paper and for two and a half years we kept out of default in North Bergen; that is generally speaking. There were no serious items. And since then, in North Bergen, as a result of these suits we have had, we have not been able to pay out any money. In the meantime we built up from a small reserve fund over $2,000,000 of cash for the benefit of all creditors. We worked out a mandamus of over $1,000,000 for North Bergen for state and county taxes. In Avalon City in the winter of 1934 we kept interest paid on all of their debt and kept the maturing serial bonds paid. That is all. That is four municipalities.

For the creditors of Chester Township since the Municipal Finance Commission took an interest in the affairs of the township it has reduced the outstanding indebtedness, paper debt, over $500,000 and thereby increased the equity for the bondholders to that extent, speeded the day when they are going to be able to pay them a fair rate of interest on their investment, and with the hope now that they can

probably pay their interest off some day. They had no hopes when they went in there, they had no cash on hand, the teachers were in arrears in salaries and the municipal employees were in arrears in their salaries.

In the main they reduced the debt $500,000 through the acceptance of bonds for taxes. That would account for [fol. 208] $290,000. There were also $131,500 of bonds retired at the purchase price of $54,117.50. There were $10,000 of bonds retired in the school district, in the same way. The saving did not come in the main through buying bonds at a discount and letting taxpayers use past due bonds for payment of taxes. That makes up a small portion of it.

"The Court: I did not understand that the witness said it was a saving.

Mr. Vanderbilt: A reduction of debt.

The Witness: He did not permit me to put in the record what we saved."

I do not quite follow you when you say that these reductions of debt I have just spoken of came from the creditors of the township. I suppose it was not that payments were made by the township, but that concessions were made by the bondholders. I have knowledge that one of the largest bondholders in Chester Township let go of his past due bonds and took future bonds of the same municipality. He lives in this neighborhood locally and knew the conditions and he encouraged the acceptance of bonds for taxes. Now, we have another municipality in which the creditors have signed up one hundred per cent, and there is only $1,000,000 of bonds involved in that, to permit the acceptance of bonds for taxes. They know that since the municipality in its present condition is almost hopeless as to when they will get any money, this speeds the day when they can get out.

I can see a clear distinction between the use of bonds in payment of taxes when all the creditors consent and those instances where they do not. We were suddenly brought to realize that in the fall of 1985, as you know. I did not [fol. 209] realize it when we began to get acquainted in North Bergen, we never did accept any bonds in North Bergen for taxes. Nor in Asbury Park, under the jurisdiction of the Municipal Finance Commission. It was done down there before we went there.

The Municipal Finance Commission has built up a reserve against the outstanding taxes in Chester Township.

When we went in there the reserves were about 4% of the receivables. At the present time the reserve is 51% of the outstanding taxes and receivables, built up in the main gain from savings on interest coupons attached to the bonds which were turned in on the tax settlement proposition, and the profit from the bonds that were purchased. It is in a position so that now we have a lot of vacant lots in Chester Township on which the accumulations are 218% of the assessed valuations. We know we have to take a tremendous loss there some day and we could, for instance, as an illustration, if you want to settle a given piece of property, wipe out half of the taxes against that property and it would not be affected in the subsequent levy of the municipality. That is a protection for the bondholders.

[fol. 210] EXHIBIT 17

LaVallette

The following items may be set up against funds in hand. In many cases other sums than those here indicated are due.

Statement as of 12/31/35

Current:

Funding tax notes in default $57,580.26

Trust:

Sewer assessment & Assess. Funding notes in default 272,724.44

Capital:

Serial bonds in default 5,000.00

Fort Lee

The following items may be set up against funds in hand. In many cases other sums than those here indicated are due.

Statement as of 12/31/35

Current:

Revenue notes in default $96,857.16

Trust:

Temporary bonds in default	2,539,700.00

Capital:

Temporary Impvt. Bonds in default	254,000.00

[fol. 211] Brigantine

The following items may be set up against funds in hand. In many cases other sums than those here indicated are due.

Statement as of 8/31/36

Current:

County taxes of 1935 & prior years due	$536,568.92

Trust:

Temp. Bonds in default	76,936.61

Capital:

Gen'l Temp. Bonds in default	464,644.52

Manville

The following items may be set up against funds in hand. In many cases other sums than those here indicated are due.

Statement as of 12/31/35

Current:

Due to Hillsborough (taxes collected by Manville)	$1,048.81
Local School Taxes	52,232.80
Errors in Taxes rec'd in settlement	9,517.06
Taxes overpaid	590.96

Trust:

Reserve for amount due to capital	900.50

Capital:

Reserve for legal costs	50.00
Due to water operating	220.70
Reserve for advertising costs: Rd. Impt.	20.00
Reserve for cost of bond issue	271.42
Reserve for Municipal Finance Commission	700.00

Water Operation:

Reserve for tenants deposits	25.00

[fol. 212]

Runnemede

The following items may be set up against funds in hand. In many cases other sums than those here indicated are due.

Statement as of 12/31/35

Current:

Emergency Refinancing Bonds in default	$6,000.00
Tax Title Bonds in default	6,000.00
Reserve for unallocated receipts	64.72
Reserve for tax overpayments	212.52

Trust:

Cash deficit	$9,351.94
Serial Bonds in Default	15,000.00
Temp. Impvt. Bonds in default	31,082.53

Capital:

Serial Bonds in default	6,000.00
Temporary Impv't Bonds in Default	13,917.17

North Bergen

The following items may be set up against funds in hand. In many cases other sums than those here indicated are due.

Statement as of 7/31/36

Current, Trust and Capital:

Bonds & notes in default	$6,801,044.67

Avalon

The following items may be set up against funds in hand. In many cases other sums than those here indicated are due.

Statement as of 7/26/36

Current, Trust and Capital:

Notes and bonds in default	$352,974.97

[fol. 213] Lodi (So. Hackensack)

The following items may be set up against funds in hand. In many cases other sums than those here indicated are due.

Statement as of 12/31/35

Current:	
Local school taxes due	$16,939.57
Trust:	
Accts. payable	6,366.06

Neptune City

The following items may be set up against funds in hand. In many cases other sums than those here indicated are due.

Statement as of 12/31/35

Current:	
Actual cash deficit	$17,588.68
Trust:	
Interfund accts. payable	30,263.44
Capital:	
Bonds & notes in default	49,487.18

Monnachie

The following items may be set up against funds in hand. In many cases other sums than those here indicated are due.

Statement as of 12/31/35

Current:	
Actual cash deficit	$10,876.30
Trust:	
Indebtedness in default	7,873.18
Capital:	
Indebtedness in default	45,700.00

[fol. 214] West New York

The following items may be set up against funds in hand. In many cases other sums than those here indicated are due.

Statement as of 12/31/35

Current:

Bonds in default	$948,583.27

Capital:

Temp. Impvt. notes in default	48,762.47

Delaware

The following items may be set up against funds in hand. In many cases other sums than those here indicated are due.

Statement as of 12/31/35

Current:

Tax revenue notes in default	$84,500.00

Trust:

Serial Bonds in default	96,000.00

Capital:

Temp. Impvt. bonds in default	77,809.11

Lakewood

The following items may be set up against funds in hand. In many cases other sums than those here indicated are due.

Statement as of 12/31/35

Current:

Owed state & county taxes	$371,089.04

[fol. 215] Woodbridge

The following items may be set up against funds in hand. In many cases other sums than those here indicated are due.

Statement as of 12/31/35

Current:

Cash deficit	$15,682.03

Capital:

Bonds in default	$1,023,747.17

Chester

The following items may be set up against funds in hand. In many cases other sums than those here indicated are due.

Statement as of 12/31/35

All Accounts:

Defaulted bonds and notes	$171,000.00 plus

(1935 Audit not completed.)

Mt. Ephraim

The following items may be set up against funds in hand. In many cases other sums than those here indicated are due.

Statement as of 12/31/35

Current:

Tax revenue notes in default	$59,500.00

Trust:

Temp. Impv't notes in default	49,720.36

Capital:

Temp. Impv't Bonds in default	42,336.37

Water Operation:

Due to water cap. acct.	5,000.00

[fol. 216] Asbury Park

The following items may be set up against funds in hand. In many cases other sums than those here indicated are due.

Statement as of 12/31/35

Current:

Tax notes and bonds in default	$649,500.00

Trust:

Temp. bonds & notes in default	219,500.00

Capital:

Bonds & notes in default	4,821,607.50

Beach Operating Acct.:

Due capital account	90,373.04

Water Operating:

Reserve for accrued int.	33,279.19

[fol. 217] EXHIBITS 18-a TO 18-q

SOVEREIGN CAMP, W. O. W.

v.

WILENTZ et als.

18-a

Moonachie

Current:	On Hand
Action cash—deficit 12/31/35—$10,876.30	
Trust:	
Cash on hand 12/31/35	$2,873.15
Capital:	
Cash on hand 12/31/35	$8,621.88
Total cash on hand	$11,495.03

18-b

Woodbridge

Current:

Cash deficit 12/31/35—$15,682.03	

	On Hand
Trust:	
Cash on hand 12/31/35	$76,251.01
Capital:	
Cash on hand	22,324.60
Total cash on hand	$98,575.61

18-c

West New York

Current:	
Cash on hand as of 12/31/35	$209,715.98
Trust:	
Cash on hand as of 12/31/35	3,185.11
Capital:	
Cash on hand as of 12/31/35	480.08
Total cash on hand	$213,381.17

18-d

Lakewood

Current only:	
Cash on hand 12/31/35	$1,202.41
Total cash on hand	$1,202.41

[fol. 218]

18-e

Lavallette

Current:	
Cash on hand 12/31/35	$886.37
Trust:	
Cash on hand 12/31/35	5,696.39
Capital:	
Cash on hand 12/31/35	162.66
Total cash on hand	$6,745.42

18-f

Fort Lee

Current:	On Hand
Cash on hand 12/31/35	$48,178.24
Trust:	
Cash on hand 12/31/35	16,843.40
Capital:	
Cash on hand	39,000.00
Total cash 12/31/35	$104,021.64
Total Cash as of 8/31/36	206,083.05

18-g

Brigantine

Cash on hand as of 8/31/36:

Current	$9,814.95
Trust	2,450.67
Capital	2,183.11
Total	$14,448.73

18-h

Manville

Cash on hand as of 12/31/35:

Current	$17,850.00
Trust	1,268.45
Capital	1,012.12
Water Account	2,713.24
Water Expense	524.97
Total cash on hand	$23,368.78

[fol. 219]

18-i

Runnemede

Cash on Hand

	On Han
Current:	
On Hand Treasurer 12/31/35	$5,661.2
Trust:	
Starting out there is a cash deficit of $9,351.94	
Capital:	
Cash on hand 12/31/35	$10,545.88
Total cash on hand	$16,207.12

18-j

Asbury Park

Current:	
Cash on hand 12/31/35—Current 1936	$145,914.69
Prior year	589,697.02
Trust:	
Cash on hand 12/31/35	42,867.24
Capital:	
Cash on hand 12/31/35	10,207.50
Beach Operating Account:	
Cash on hand 12/31/35	216,625.93
Water Operating:	
Cash on hand 12/31/35	101,756.86
Rent Deposit	41,293.73
Total	$1,148,362.97

18-k

Chester

	On Hand
Current:	
Cash on hand 12/31/35	$11,863.73
Trust:	
Cash on hand 12/31/35	22,796.52
Capital:	
Cash on hand 12/31/35	667.76
Sewer:	
Cash on hand 12/31/35	28,742.97
Water:	
Cash on hand 12/31/35	18,043.41
Total cash on hand	$82,114.39

[fol. 220]

18-l

Neptune City

Current account as of 12/31/35:	
Actual cash deficit of $17,558.68	
Trust:	
Cash on hand as of 12/31/35	$11,352.03
Capital:	
Cash on hand	571.50
Total cash on hand	$11,923.53

18-m

Lodi (So. Hackensack)

Current:	
Cash on hand as of 12/31/35	$752.02

	On Hand
Trust:	
Cash on hand	$4,758.16
Water Assess:	
Cash on hand	8,577.77
Total cash on hand	$14,087.95

18-n

Delaware

Current:	
Cash on hand 12/31/35	$6,530.64
Trust:	
Cash on hand 12/31/35	60,935.43
Capital:	
Cash on hand 12/31/35	1,323.60
Total cash on hand	$68,789.67

18-o

Avalon

Cash on hand as of 7/26/36:	
Current	$7,984.75
Trust	6,376.46
Capital	1,209.62
Sinking Fund	1,810.98
Water	1,237.83
Total	$18,619.64

[fols. 221-226]

18-p

North Bergen

Cash on hand as of 7/31/36:	
Current	$419,475.51
Trust	191,184.85
Capital	28,221.01
Sinking Fund: Reserve Account	1,366,322.77
Total	$2,005,204.14

18-q

Mt. Ephraim

	On Hand
Current:	
Cash on hand 12/31/35	$5,063.79
Trust:	
Cash on hand 12/31/35	17,391.22
Capital:	
Cash on hand 12/31/35	1,989.69
Water Operating:	
Cash on hand 12/31/35	1,352.90
Total cash on hand	$25,797.60

[fols. 227-236] EXHIBIT 14

[fol. 237] Minutes of the Municipal Finance Commission

Meeting of October 2, 1936

Borough of Runnemede, Camden County

* * * * * * *

3. The Chairman called attention to a communication addressed to the Mayor bearing date of September 22nd supplemented by a telegram dated October 1st. It was the opinion of this Commission that no deed should be executed on the part of the Borough until such time as a formal report had been filed with this Commission pertaining to the sale of this property.

3a. The disposition of the proceeds of this sale was considered and it was pointed out that under the regulations imposed upon municipalities, it was required that the proceeds of the sale would have to be deposited in the capital accounts and held in reserve subject to such disposition as may be approved by this Commission.

3b. Telegram from Borough Solicitor Varalow was received relative to the aforementioned sale and while this

explained the situation in part, it was not considered a formal report as requested.

3c. The following resolution was, therefore, proposed by Commissioner Woolston, seconded by Commissioner Backes and adopted by a unanimous vote:

3d. Whereas it has been informally reported to this Commission that the Runnemede Theatre has been sold to a private party and

3e. Whereas no formal report with respect to the sale, disposition thereof and other matters had been submitted to this Commission,

3f. Now, Therefore, be it Resolved that this Commission give no formal approval to any actions taken or to be taken in connection with such sale until a full and complete report has been filed with the Commission for consideration,

3g. And be it Further Resolved that any proceeds from the sale of this Theatre be deposited in the capital division of accounts and said proceeds be reserved subject to such disposition as may be later approved by this Commission.

4. Mr. Spencer reported on the pending tax sale and the importance thereof was discussed. After receiving Mr. Spencer's report, it was directed that the Secretary inform Counsel to this Commission that said sale would be advertised for the first time on October 16th, the date of the sale being fixed as November 10th. The Commission is of the opinion that it is very important that this sale be held on the date specified and not adjourned from week to week as permitted by statute. This opinion is based on the fact that the sale is not a complete sale but is in accordance with a resolution of the governing body, namely 1934 and prior years.

[fol. 238] Meeting of September 25, 1936

* * * * * * *

2. Copy of a letter from Henry R. Hathaway, Secretary to Eldridge R. Johnson, addressed to the Borough dated September 22nd was read by the Chairman. It was the opinion of this Commission that the proposition set forth in Mr. Hathaway's letter merited careful consideration with the thought that it might be possible to secure the assent of all

creditors to a plan somewhat similar to that being followed in the Township of Delaware.

3. The Secretary reported a visit from Mr. Grossman of Judge Varbalow's office relative to the matter of foreclosure proceedings in the Borough. Mr. Grossman was desirous of knowing whether this Commission would order the Borough Collector to forthwith turn over all remaining certificates subject to foreclosure at this time. In view of the fact that the certificates turned over to the Solicitor several months ago have not been completely foreclosed, it was the opinion of the Commission that no formal action would be taken other than that expressed in its recent resolution until such time as the Borough Solicitor has reported the status of all certificates in his possession and until there is a specific report as to the amount by which the appropriation will have been encumbered by the foreclosure of the certificates now in the possession of the Borough Solicitor. The Commission is of the opinion that when the proceedings have been completed on the certificates now in the possession of the Solicitor, it will then consider the use of any statutory powers which it may have to compel the Collector to turn over such additional certificates as may be subject to foreclosure at this time and on which the governing body has directed that proceedings be instituted.

[fol. 239] Meeting of September 18, 1936

* * * * * * *

5. Letter from Borough Solicitor Varbalow relative to foreclosure of liens was read by the Chairman and directed to be acknowledged by the Secretary in due course with a direction that the Secretary be directed to procure information relative to progress of foreclosures in process, sufficiency of appropriations, etc.

6. There was noted for the records excerpt from the minutes of Borough Council of the Borough of Runnemede meeting held on August 13th 1936 and it was the opinion of this Commission that the Collector forthwith proceed to carry out the terms of said resolution. It was the further opinion of the Commission that a tax sale should be held for all items subject to sale at this time.

7. Letter from Collector Spencer was read and the Commission directed that Mr. Spencer be requested to appear

before the Commission at its meeting of October 2nd 1936 at 11:15 o'clock A. M.

8. The matter of the sale of the Runnemede Theatre was discussed and the Secretary was directed to procure a report relative to the sale, etc.

. . . . . .

[fol. 240] Meeting of September 11, 1936

. . . . . .

6. Certified copy of a resolution adopted by the Borough Council under date of September 2nd whereby certain duplicate assessments on property known as Lot 1, Block 119 were directed to be cancelled was duly considered and it was by motion made, seconded and carried directed that assent of this Commission be given thereto subject to the approval thereof by the Auditor of the Commission.

. . . . . .

[fols. 241-242] 7a. Investigation does not indicate that the Collector of Taxes has transmitted any report to this Commission as of July 15th, therefore, the following resolution was proposed by Commissioner Martin, seconded by Commissioner Backes and adopted by a unanimous vote:

7b. Whereas the Municipal Finance Commission at a regular meeting held on May 15, 1936 adopted a resolution directing that a tax sale be started immediately after July 31, 1936 and

7c. Whereas the Tax Collector was directed to report to this Commission within thirty days after May 15th and transmit a further report on or before July 15th and

7d. Whereas no such reports have been filed,

7e. Now, Therefore, be it Resolved that the Tax Collector be directed to appear before this Commission at the next regular meeting; namely, September 18th at 11:15 o'clock A. M. and report the status of the tax sale work at this time and further report as to why the resolution of May 15th was not complied with in all particulars.

[fol.243] Meeting of September 4, 1936

. . . . . .

9. Letter from Harold M. Fisher, Commander of the John Irvin Post No. 250 relative to the refusal of this Commission to approve the reduction of interest on delinquent taxes was carefully considered. The Commission desired to go on record through these minutes to the effect that any action relieving delinquent owners of penalties creates an inequity or preference and notwithstanding the fact that there are numerous individuals who would take advantage of any action relieving the Collector of the duty of collecting accrued penalties confusion and dissatisfaction is bound to result. The Commission wishes to point out that the Borough in the final analysis must rely upon the cooperation of those individuals who pay taxes on time and who through such payments support the Borough Government. These individuals are entitled to first consideration and any action detrimental to their interests will necessarily be detrimental to the interests of the Borough as a whole.

10. Certified copy of a resolution of the Borough Council dated August 13th as more particularly detailed below was considered:

[fols. 244-246] Whereas, at the time of the adoption of the 1936 budget the State of New Jersey was furnishing in part, funds for relief and the 1936 Emergency Relief budget item was accordingly reduced, and

Whereas, since the adoption of the 1936 Budget, the State of New Jersey contributions toward emergency relief has been withdrawn, and

Whereas, at the time of the adoption of the 1936 budget said contingency was not foreseen or anticipated, Therefore,

Be it Resolved by the Mayor and Council of the Borough of Runnemede, that the 1936 budget of the Borough be increased by allowing an additional sum of $1,500.00 for Emergency Relief.

10a. It was regularly moved, seconded and carried that the assent of the Municipal Finance Commission be given to the aforesaid resolution with the proviso that the emergency appropriation be cleared in the 1937 budget.

. . . . . .

12. Some discussion followed with respect to foreclosure proceedings and it was regularly moved, seconded and carried that the Collector be directed to turn over to the Borough Attorney all tax title liens subject to foreclosure at this time.

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[fol. 247] Meeting of July 17, 1936

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4. Certified copy of a resolution adopted by the Board of Runnemede under date of July 1st was read and directed to be spread in full in these minutes.

Whereas, Taxpayers of this community have expressed to this Council a willingness to pay up delinquent taxes, if the penalties thereon be waived;

Therefore, be it Resolved, by the Mayor and Council of the Borough of Runnemede, that on all payments of delinquent taxes made on or before August 1st, 1936, to the Collector of Taxes of the Borough of Runnemede all penalties and interest be waived.

4a. Supplementing the action of this Commission at a previous meeting, it was regularly moved, seconded and carried that the assent of this Commission to the aforementioned resolution be denied.

5. Certified copy of a resolution adopted by the Borough Council under date of July 1st pertaining to the sale of the Runnemede Theatre property together with report from the auditor to this Commission thereon was duly considered and it was directed that this resolution be spread in full below:

Whereas premises in the Borough of Runnemede known as the Runnemede Theatre property, and designated as lots 13 & 14, Block 35, on the Borough tax maps, and now owned by this Borough are not presently used by it and are not needed for any public use or purpose.

Therefore, be it Resolved by the Mayor and Council of the Borough of Runnemede, that:

1. The Mayor of the Borough of Runnemede is hereby authorized to hold a public auction sale of said lands and premises, and to give lawful notice thereof in accordance with the laws of this State.

2. That said premises shall not be sold for less than $10,000.00.

3. That the Mayor of the Borough of Runnemede prepare conditions of sale to be announced at the time of sale.

4. Said terms of sale to be approved by Borough Council.

5. After considering the aforesaid resolution, it was regularly moved, seconded and carried that this Commission approve the action of the Borough Council as set forth above.

[fol. 248] 6. Report of Auditor Holcombe to the effect that he had approved a bill for oil and gasoline in the Borough in the amount of $19.78 of which $3.75 was chargeable to the police appropriation was duly considered. It appears that the $3.75 item represents charges for gasoline furnished the personally owned car of the Mayor, who is chairman of the police committee. It was the opinion of this Commission that while charges of this character were permissible there should be a report on file indicating the purpose or purposes for which the car was used when in the service of the Borough.

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[fols. 249-250] Meeting of July 10, 1936

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4. Copy of report to bondholders and creditors of the Borough and School District prepared and delivered as of July 6th was noted for the records and directed to be filed.

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[fol. 251] Meeting of July 2, 1936

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6. It was reported that at a meeting of the Borough Council held recently the resolution was adopted relieving taxpayers from the payment of interest if taxes are paid in full prior to August 1. This procedure is directly contrary to the established policy of this Commission and it was, therefore, regularly moved, seconded and carried that the Municipal Finance Commission disapprove the action of the Bor-

ough Council in eliminating the interest requirement on delinquent taxes.

6a. It is the understanding of this Commission that the Borough Collector has been collecting interest in a proper manner heretofore and it is the opinion of this Commission that he should proceed in accordance with previous actions and collect interest on all delinquent taxes.

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[fol. 252] Meeting of June 19, 1936

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4. Communication from John Price relative to taxes and other charges on property in the Borough of Runnemede was duly noted and it was the opinion of this Commission that the Collector was perfectly correct in his refusal to accept the taxes without interest, however, the Commission could see no objections to granting permission to make payments on an installment basis.

5. Letter from Borough Clerk Gaunt was read by the Chairman and directed to be answered by the Secretary. It was the opinion of this Commission that delivery slips should be secured on the relief orders in question, it being pointed out that it was not necessary that the detail be itemized on the order itself.

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[fols. 253-255] Meeting of June 12, 1936

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4. Report of Auditor Holcombe with respect to insurance matters was reviewed and it was the opinion of this Commission instead of having the D. A. Henderson & Company submit a refund check to the Borough, appropriate credit adjustment be made and a possible overexpenditure thus obviated. It was directed that the papers be returned to Mr. Holcombe with instructions to see if arrangements could not be made whereby the $82.05 check could be returned to the company and suitable credit adjustments arranged.

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[fols. 256-257] Meeting of May 29, 1936

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5. Letter from Borough Clerk Gaunt with respect to a change fund for the Borough Collector in the amount of $100.00 being authorized was duly noted.

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[fols. 258-259] Meeting of May 15, 1936

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4. Letter from the Manager of the New Jersey Bell Telephone Company at Camden relative to certain changes in telephone service in Runnemede was read by the Chairman and the Secretary was directed to authorize the auditor to this Commission to approve the claims which are now pending being those incurred prior to the changes in service.

. . . . . .

7. The matter of holding a tax sale in the Borough was discussed and it was the opinion of this Commission that the Borough Collector should take appropriate steps to have a complete tax sale instituted immediately after July 1, 1936.

7a. The following resolution was, therefore, proposed by Commissioner Backes, seconded by Commissioner Woolston and adopted by a unanimous vote:

7b. Whereas the Borough of Runnemede has held no tax sale as required by the statute and it is necessary that such action be taken,

7c. Now, Therefore, be it Resolved that the Collector of the Borough of Runnemede shall report to this Commission within thirty days from the date of this resolution what steps are being taken to hold a complete tax sale forthwith after July 1st,

7d. And be it Further Resolved that the Collector shall again report to this Commission on or before July 15th the exact status of the pending tax sale as of that date,

7e. And be it Further Resolved that such tax sale shall be started immediately after July 1 ,1936 and shall be a com-

plete sale of all property subject to sale as of said July 1, 1936.

7f. Be it Further Resolved that all of these proceedings be taken in accordance with Section 3 of Chapter 292, P. L. 1935.

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[fols. 260-261] Meeting of April 17, 1936

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6. Communication from the John Irvin Post No. 250 American Legion protesting the removal of a telephone from the Police Station was read by the Chairman and directed to be answered along the general lines that arrangements should be made with some person or official with respect to emergency calls.

7. Report from Auditor Holcombe with respect to taxes of Clara Kohl was read by the Chairman and directed to be answered along the general lines that this was a matter which should be referred to the Borough Collector. There is at present a statute pertaining to installment payments of liens or taxes and it may be that recourse could be had to the same.

8. Refunding plan for the Borough of Runnemede and the School District of the Borough dated March 1, 1936 was duly considered and a tentative assent given thereto by motion duly made, seconded and carried. It was directed that this plan be the subject of further study on the part of the members of this Commission before formal assent is given.

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[fol. 262] Meeting of April 3, 1936

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4. There was filed with the Commission a proposed plan for refinancing the Borough of Runnemede and the School District of the Borough of Runnemede bearing date of March 1st, 1936. It was directed that this proposal be the subject of study on the part of this Commission.

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[fols. 263-264] Meeting of March 27, 1936

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4. Report of Auditor Holcombe with respect to the differences existing between the advertised budget of the Borough of Runnemede and the budget approved by this Commission was reviewed and it was the opinion of this Commission that formal notice should be served on the State Auditor to again notify the County Tax Board with respect to the budget.

4a. The several differences were taken up in detail and it was regularly moved, seconded and carried that after due investigation, this Commission could not assent to the changes made by the Borough of Runnemede.

4b. The use of surplus revenue by the Borough is unwarranted and improper inasmuch as there is no surplus revenue available for appropriation. The increase in the appropriation of Health and Charities cannot be allowed inasmuch as such increase needs the specific approval of this Commission and it is not felt that such increase should be allowed at this time. The decrease in the appropriation for the Municipal Finance Commission and in the appropriation for audit might be made by the Borough except for the fact that the Commission must devote sufficient time to the affairs of the Borough to carry out the duties imposed on it by statute and it would appear that any attempt on the part of the Borough to reduce these appropriations would simply bring about the creation of a deferred charge which must be raised in future budgets. The reduction of deferred charges on the part of the Borough is without warrant in law and this Commission will not give the State Auditor authority with respect to such deferred charges.

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[fols. 265-267] Meeting of March 13, 1936

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5. A report from Auditor Holcombe with respect to the reduction of an assessment against property of Lorne Heitshu was reviewed. The facts appear to be that the County Board had fixed the valuation at a figure of $1,800.00 for the year 1933 and apparently through delay on the part of the property owner the valuation was not reduced for the years

1934 and 1935 but was reduced for the year 1936. Ther no question but what the property owner was negligent, h ever, it was the opinion of this Commission that it wo give its assent to the action of the Borough Council as pressed in its resolution provided the property owner ma settlement for all taxes, assessments and other char within ten days from the date of the adoption of this reso tion including the first quarter of taxes for the year 19 said settlement to be made in cash and based on the amo due after giving effect to said abatement. This approva given with the understanding that the assent of this Co mission will be void if cash settlement is not made for taxes and other charges including penalties within ten da from this date.

6. Printed copy of the 1936 budget of the Borough Runnemede was noted for the records and directed to filed, attention being called to the fact that this Commissi has certified a copy of the 1936 budget to the County Boa of Taxation of the County of Camden, said budget havi been approved in accordance with Section 269a of Chap 340, P. L. 1931 as amended.

7. The Secretary was directed to communicate with t Borough Collector and the Borough Clerk inquiring as what steps have been taken with regard to the holding o tax sale. The Borough of Runnemede has a tax collecti history which would permit it to work out of its Financ difficulties if all of the responsible officials in the Townsh would perform the duties which by statute they are requir to perform. In view of this fact, it is highly important th a tax sale be held forthwith. The Borough can expect consideration or cooperation from its creditors unless takes appropriate steps to carry out the requirements of t statute and in view of the fact that this municipality is in position to be refinanced within a reasonable time, it was t opinion of this Commission that appropriate steps be tak to secure greater activity in the matter of tax collectio sales, etc.

[fol. 268] Meeting of February 28, 1936

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6. Copy of letter from Special Counsel Stevens to t County Counsel of Camden County relative to the inclusi

of an item in the Runnemede tax levy pertaining to the claim of the Sovereign Camp, Woodmen of the World was read by the chairman and directed to be filed.

. . . . . .

8. Judge Varabalow, as the legal representative of the Borough, stated that the Borough was desirous of reducing certain items in the budget and in addition desired to use a certain amount of surplus revenue in an endeavor to reduce the budget.

8a. Judge Varabalow stated that the borough petitioned this Commission to reduce the item of tax sale expense and foreclosures from $2,600.00 to $900.00, to reduce the appropriation for W. P. A. projects from $1,250.00 to $750.00, was desirous of having the appropriation for deferred charges eliminated altogether, and requested reductions in the appropriations for Municipal Finance Commission and audit expense.

8b. After discussing the situation at some length it was pointed out that the appropriations for tax sale and foreclosure expense and W. P. A. projects were items under the jurisdiction of the governing body and this Commission would defer to the wishes of the Borough Council.

8c. It was pointed out that there was no surplus revenue available and as a matter of fact there was included under deferred charges $4,506.24 on account of a deficit in surplus revenue. The Commission while mindful of the importance of keeping the budget at a minimum did not feel that it could acquiesce to a lower figure for the expenses of the Commission and the cost of audit, although it was agreed that the character of the work of the collector and clerk was such that it might be possible to keep the expenses at a figure below that provided in the budget.

8d. After further review the following motion was proposed by Commissioner Martin, seconded by Commissioner Backes and adopted by a unanimous vote:

8e. Resolved, that except for the appropriation for the expenses of the Municipal Finance Commission and Audit, which items are to be the subject of further study, the request of Judge Varabalow for the elimination of the deferred charges be denied.

[fol. 269] 9. Following the conclusion of this discussio
Municipal Finance Commission proceeded to carefully
view the several items of the budget and by motion
made, seconded and carried, approved the following chan

The item under appropriations for Expense of Tax
and Foreclosures approved by this Commission at its m
ing of February 7th in the amount of $2,600.00 be and
same is hereby reduced to $900.00.

The item of appropriation W. P. A. projects $1,25
approved by this Commission at the meeting of Febru
7th be reduced from $1,250.00 to $750.00.

The items of Municipal Finance Commission $1,50
and audit $750.00 after being carefully reviewed w
directed to stand unchanged with the understanding t
this Commission through its auditors use every possi
effort to keep the expense of the Commission and its audit
at a minimum.

10. Following the above action, Commissioner Backes p
posed the following resolution which was seconded by C
missioner Martin and adopted by a unanimous vote:

10a. Whereas, the Municipal Finance Commission un
date of February 7th, 1936 approved a budget for
Borough of Runnemede for the year 1936, and

10b. Whereas, this Commission has approved the re
tion of certain items of appropriation as more particula
referred to in these minutes,

10c. Now, Therefore, be it Resolved, that the Munic
Finance Commission hereby approves the budget which
lows herewith and is made part of this resolution, and b
Further Resolved, that this budget be spread in full in th
minutes and certified to the Borough in accordance with
tion 209 (a) of Chapter 340, P. L. 1931 as amended, and

10d. Be it Further Resolved, that the Secretary trans
a certified copy of these minutes to the Secretary of
Camden County Tax Board with a notice that the bu
attached hereto and made part hereof shall be deemed
official budget of the Borough, all of which action shal
taken in accord with the section and act hereinabove
ferred to:

Borough of Runnemede
1936 Budget

Surplus Revenue Appropriated	None.
Miscellaneous Revenues:	
Licenses and Permits	$1,400.00
Interest on Delinquent Taxes	4,000.00
Interest on Assessments	1,500.00
Franchise Tax	5,000.00
Gross Receipts Tax	700.00
Tax Searches	100.00
Refund on Water Mains	1,239.36
Fines and Costs	200.00
5% Bus Gross Receipts Tax	150.00
Dog Licenses	362.55
	14,651.91
Amount to be Raised by Taxation	32,853.26
	$47,505.17

[fol. 270]

Appropriations

Administrative and Executive	$1,350.00
Assessment and Collection of Taxes	2,773.00
Department of Finance	90.00
Police	3,520.00
Fire	1,350.00
Fire Hydrant Service	2,410.00
Health and Charities	1,355.00
Public Roads	3,075.00
Street Lighting	4,000.00
Garbage Collection	100.00
Elections	200.00
Insurance	1,150.00
Telephones	280.00
Contingent	100.00
Dog License Expenses	88.00
N. J. League of Municipalities	35.00
Expense of Tax Sale and Foreclosures	900.00
Municipal Finance Commission	1,500.00
Audit	750.00
W. P. A. Projects	750.00
Debt Service	15,212.50
Deferred Charges	6,398.67
Building Inspector	100.00
Water Rent—Theatre	16.00
	$47,505.17

11. Attention is directed to the fact that the budget approved by this Commission under date of February 7, 1936 permitted the reduction in certain deferred charges amounting to $12,273.14. These by direct action of the Commission were permitted to be included in the budget in the amount of $6,398.67 with the stipulation that the reduction in such deferred charges should not be effective unless the budget as approved by the Commission be adopted in full by the governing body; which stipulation still holds with respect to the adoption of the revised and amended budget hereinabove referred to.

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[fol. 271] Meeting of February 14, 1936

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4. Certified copy of resolution adopted by the Mayor and Council of the Borough of Runnemede whereby certain taxes were settled by the use of bonds was duly considered and Auditor Holcombe's report thereon reviewed. It was the opinion of the Commission that this resolution be formally considered as a transaction pending as of October 11th, 1935, it being reported by the Borough Treasurer that all settlements involved had been consummated on or before January 31, 1936.

Whereas, certain taxpayers of the Borough of Runnemede, as hereinafter designated, tender Bonds Nos. 43 and 44 of the Borough of Runnemede, being Temporary Improvement Bonds, dated November 1st, 1926, due November 1st, 1932, interest rate 5½ per centum, in the denomination of One Thousand Dollars ($1,000.00) each, with interest thereon, as payment upon account of the municipal liens, taxes and assessments, levied and assessed respectively on the following:

Irene E. Willets, Owner	Block 61, Lot 18
Hedding Building and Loan Association, Owner	Block 51, Lot 8
Hedding Building and Loan Association, Owner	Block 94, Lot 21
Blackwood Building and Loan Association, Owner	Block 49, Lot 10

Frank Haarlander, Owner	Block 139, Lot 6
Frank Haarlander, Owner	Block 139, Lot 7
Charles D. Bowers, Owner	Block 46, Lot 9
First Mortgage Service Co., Owner	Block 42, Lot 16
First Mortgage Service Co., Owner	Block 60, Lot 19

For the purpose of taking credit therefor in the sum of One Thousand Dollars each, being the principal of the said bonds; and further tender the payment of the balance of said taxes and municipal liens, together with all taxes and municipal liens subsequent to January 1st, 1934, and up to and including the taxes assessed for the year 1934, in full, with interest upon all delinquent taxes and assessments, in cash:

Now, Therefore, be it Resolved by the Mayor and Borough Council of the Borough of Runnemede, in the County of Camden, New Jersey, that the Tax Collector of the Borough of Runnemede be and he is hereby authorized and directed to accept from the said owners said Bonds Nos. 43 and 44 of the Temporary Improvement Bonds of the Borough of Runnemede, dated November 1st, 1926, due November 1st, 1932, interest rate 5½ per centum, in the denomination of One Thousand Dollars each, with interest due thereon, on account of the principal of taxes and municipal liens and assessments upon premises assessed in the names of the owners hereinabove recited and as hereinabove set forth, which fell due prior to January 1st, 1934, and to give credit therefor, for said bonds and interest, in the amount of the principal of said bonds only, to wit, One Thousand Dollars ($1,000.00) each, provided that the balance of the said municipal liens and taxes, together with taxes and municipal liens subsequent to January 1st, 1934, and the interest upon all delinquent taxes and municipal liens, be paid in full in cash; and, provided further, that said payment shall be made within fifteen days after the written assent of the Municipal Finance Commission to the adoption of this resolution shall have been received; and

Be it Further Resolved that the said Tax Collector, upon receipt of said bonds, shall deliver the same to the Borough Treasurer.

Dated February 5, 1936.

[fol. 272] Statement of Taxes and Assessments Due on properties Situate in the Borough of Runnemede, Camden County, New Jersey

Irene E. Willits, Owner, Block 61, Lot 18

Balance Sidewalk	$47.80
1933 Taxes	88.20
1934 Taxes	85.36
1935 Taxes	90.72
Interest	39.57
Total	$351.65

Hedding Building and Loan Association, Owner, Block 51, Lot 8

1932 Taxes	20.49
1933 Taxes	115.24
1934 Taxes	111.57
1935 Taxes	116.64
Interest	30.00
Total	$393.94

Hedding Building and Loan Association, Owner, Block 94, Lot 21

Interest to date of sale	8.86
Balance Sidewalk	104.00
1932 Taxes	153.10
1933 Taxes	164.80
1934 Taxes	158.54
1935 Taxes	168.48
Interest	101.06
Total	$858.84

Blackwood Building and Loan Association, Owner, Block 49, Lot 10

Balance Sidewalk	253.73
1930 Taxes	48.54
Interest & Cost of Sale	19.97
1931 Taxes	108.55
1932 Taxes	99.28
1933 Taxes	103.20
1934 Taxes	99.91
1935 Taxes	102.24
Interest	120.68
Total	$956.10

Frank Haarlander, Owner, Block 139, Lot 6

1932 Taxes	60.18
1933 Taxes	81.92
1934 Taxes	79.32
1935 Taxes	80.64
Interest	40.61
Total	$342.67

Frank Haarlander, Owner, Block 139, Lot 7

1931 Taxes	10.76
1932 Taxes	8.19
1933 Taxes	9.24
1934 Taxes	8.94
1935 Taxes	10.08
Interest	8.41
Total	$55.62

Charles D. Bowers, Owner, Block 46, Lot 9

Interest & Cost of Sale	38.09
Balance Sidewalk	117.93
1932 Taxes	7.02
1933 Taxes	8.12
1934 Taxes	7.86
1935 Taxes	8.64
Interest	18.52
Total	$206.18

[fol. 273]

First Mortgage Service Co., Owner, Block 42, Lot 16

Balance Sidewalk	$43.68
1933 Taxes	120.40
Interest	19.71
Total	$183.79

(1934-1935 Taxes Paid.)

First Mortgage Service Co., Owner, Block 60, Lot 19

Balance sidewalk	54.6
1933 Taxes	93.8
Interest	20.7
Total	169.1

(1934-1935 Taxes Paid.)

Summary

	Total amount Due	Due Prior to January 1, 193
Irene E. Willets, Block 61, Lot 18	$351.65	$136.00
Hedding Building & Loan Association, Block 51, Lot 8	393.94	135.73
Hedding Building & Loan Association, Block 94, Lot 21	858.84	430.76
Blackwood Building & Loan Association, Block 49, Lot 10	956.10	633.27
Frank Haarlander, Block 139, Lot 6	342.67	142.10
Frank Haarlander, Block 139, Lot 7	55.62	28.19
Charles D. Bowers, Block 46, Lot 9	206.18	171.16
First Mortgage Service Co., Block 42, Lot 16	183.79	164.08
First Mortgage Service Co., Block 60, Lot 19	169.17	148.42
Total	$3,517.96	1,989.71

Total amount as per summary above	$3.517.9
Payment of the Borough of Runnemede temporary improvement bonds Nos. 43 and 44, dated November 1st, 1926, due November 1st 1932, Rate 5½% Denomination of $1,000.00 each	2,000.0
Balance to be paid in cash on or before January 31st, 1936	$1,517.9

4a. After a careful study of the items involved in th preceding schedules the following resolution was proposed

4b. Resolved that the Municipal Finance Commission giv its formal consent in writing to the resolution set fort above, each item being separately considered and indivi ually acted upon by the Commission.

4c. Be it Further Resolved that such assent and approval is granted with the proviso that the payments received in satisfaction of the several individual items be made within fifteen days from the adoption of this resolution; with a further proviso that any cash payments received from taxes of 1933 and prior years be held in a reserve fund and said moneys after being deposited to be separately accounted for in said reserve fund and that any cash payments on account of the principal of any assessments included in said compromise be deposited in the trust accounts to be held therein.

4d. Be it Further Resolved that this approval is conditional upon the Borough Council making payments to the reserve funds within forty-eight hours after the receipt of any of the moneys referred to in the above schedule and upon further condition that the payments referred to repre-
[fol. 274] sent all of the municipal liens or other charges now due against the properties hereinabove named.

4e. Be it Further Resolved that the assent hereinabove given is conditional upon the first quarter of the 1936 taxes being paid in cash.

4f. On motion of Commissioner Woolston, seconded by Commissioner Darby, the foregoing resolution was adopted by a unanimous vote.

5. Letter from Walter S. Keown, County Counsel for the County of Camden, accompanied by letter from Arthur T. Vanderbilt to the Secretary of the County Board of Taxation was reviewed and the matter referred to Special Counsel Stevens for appropriate action.

. . . . . .

[fol. 275] Meeting of February 7, 1936

. . . . . .

3. This meeting was called for the purpose of considering the 1936 budget of the Borough of Runnemede. Mr. Dorsett reported on his recent meeting with the Borough Council and submitted budget figures for the consideration of the Commission. After reviewing each item in detail and studying the make up of certain appropriations, the following resolution was proposed by Commissioner Backes, seconded by Commissioner Woolston and adopted by a unanimous vote:

3a. Whereas the 1936 budget of the Borough of Runne mede has been reviewed in detail by the auditor to thi Commission; namely, Mr. Dorsett, with Mr. Bowman an

3b. Whereas this budget has been the subject of revie through two hearings held in the Borough and a hearin before the full Commission and whereas the Commission i satisfied that the budget now under consideration is fai and equitable and to the best interests of all concerned;

3c. Now, Therefore, be it Resolved that the budget o the Burough of Runnemede for the year 1936 submitte by the auditor to the Commission be approved with the fo lowing changes: That the deferred charges amounting t $12,273.14 be reduced to $6,398.67; and

3d. Be it further resolved that this budget with its sup porting detail be spread in full in these minutes and certi fied to the Borough as the official budget for the year 1936 and

3e. Be it Further Resolved that this budget and the re duction in deferred charges referred to in this resolutio shall not be effective unless the budget as hereinafter pre sented be adopted in full by the governing body:

Borough of Runnemede

1936 Budget

Surplus Revenue Appropriated	Non
Miscellaneous Revenues:	
Licenses and Permits	$1,400.0
Interest on Delinquent Taxes	4,000.0
Interest on Assessments	1,500.0
Franchise Tax	5,000.0
Gross Receipts Tax	700.0
Tax Searches	100.0
Refund on Water Mains	1,239.3
Fines and Costs	200.0
5% Bus Gross Receipts Tax	150.0
Dog Licenses	362.5
	14,651.9
Amount to be raised by taxation	35,053.2
	$49,705.1

[fol. 276] Appropriations

Administrative and Executive	$1,350.00
Assessment and Collection of Taxes	2,775.00
Department of Finance	90.00
Police	3,520.00
Fire	1,350.00
Fire Hydrant Service	2,410.00
Health and Charities	1,355.00
Public Roads	3,075.00
Street Lighting	4,000.00
Garbage Collection	100.00
Elections	200.00
Insurance	1,150.00
Telephones	280.00
Contingent	100.00
Dog License Expenses	88.00
N. J. League of Municipalities	35.00
Expense of Tax Sale and Foreclosures	2,600.00
Municipal Finance Commission	1,500.00
Audit	750.00
W. P. A. Projects	1,250.00
Debt Service	15,212.50
Deferred Charges	6,398.67
Building Inspector	100.00
Water Rent—Theatre	16.00
	$49,705.17

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[fol. 277] Meeting of January 31, 1936

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6. The school budget of the Borough of Runnemede for the school year 1936-37 was taken up in detail. The Secretary reported that Mr. Bowman had contacted the Board of Education and reached a formal agreement with respect to said budget. The following resolution was, therefore, proposed by Commissioner Woolston, seconded by Commissioner Darby and adopted by a unanimous vote:

6a. Whereas it is the opinion of this Commission that the school budget as submitted by the Board of Education can be approved subject to certain changes and modifications.

6b. Now, Therefore, be it Resolved that the school budget of the Borough of Runnemede for the year 1936-37 be approved as follows: Current expenses $52,443.00 (a reduction of $1,000.00 from the figures transmitted by the Board of Education), repairs and replacements $920.00, debt service not less than $15,455.00 or a total budget of $68,818.00.

6c. And be it Further Resolved that estimated receipts from State funds and appropriation balances totalling $23,120.66 be availed of (this being an increase of $1,000.00 over the figures submitted by the Board of Education), leaving the net amount to be raised for local school taxes $45,697.34.

7. Certified copy of resolution adopted by the Borough Council under date of December 28, 1935 was filed with this Commission and directed to be spread in full in these minutes:

Whereas, certain taxpayers of the Borough of Runnemede, as hereinafter designated, tender Bonds Nos. 40, 41 and 42 of the Borough of Runnemede, being Temporary Improvement Bonds, dated November 1st, 1926, due November 1st, 1932, interest rate 5½ per centum, in the denomination of One Thousand Dollars ($1,000.00) each, with interest thereon, as payment upon account of the municipal liens, taxes and assessments levied and assessed respectively on the following:

[fol. 278] Prudential Insurance Co., Owner, Block 58, Lot 2A.
Thomas A. Dilley, Owner, Block 63, Lot 14.
Wallie H. Becker, Inc., Owner, Block 107, Lot 16.
Francis Halsted, Owner, Block 60, Lot 10.
Marie C. Halsted, Owner, Block 60, Lot 13A.
Winfield VanDexter, Owner, Block 38, Lots 5-6-7.
Victory Building and Loan Association, Owner, Block 98, Lot 3.
Lewis Toof, Owner, Block 136, Lot 14.
Prudential Insurance Co., Owner, Block 48, Lot 2.
Harry W. Bealer, Inc., Owner, Block 35, Lot 11a.

for the purpose of taking credit therefor in the sum of one Thousand Dollars each, being the principal of the said bonds; and further tender the payment of the balance of said taxes and municipal liens, together with all taxes and municipal liens subsequent to January 1st, 1934, and up

to and including the taxes assessed for the year 1934, in full, with interest upon all delinquent taxes and assessments, in cash.

Now, Therefore be it Resolved by the Mayor and Borough Council of the Borough of Runnemede, in the County of Camden, New Jersey, that the Tax Collector of the Borough of Runnemede be and he is hereby authorized and directed to accept from the said owners said bonds Nos. 40, 41 and 42 of the Temporary Improvement Bonds of the Borough of Runnemede, dated November 1st, 1926, due November 1st, 1932, interest rate 5½ per centum, in the denomination of One Thousand Dollars each, with interest due thereon, on account of the principal of taxes and municipal liens and assessments upon premises assessed in the names of the owners hereinabove recited and as hereinabove set forth, which fell due prior to January 1st, 1934, and to give credit therefor, for said bonds and interest, in the amount of the principal of said bonds only, to wit, One Thousand Dollars ($1,000.00) each, provided that the balance of the said municipal liens and taxes, together with taxes and municipal liens subseqvent to January 1st, 1934, and the interest upon all delinquent taxes and municipal liens, be paid in full in cash; and, provided further, that said payment shall be made within fifteen days after the written assent of the Municipal Finance Commission to the adoption of this resolution shall have been received; and

Be it Further Resolved that the said Tax Collector, upon receipt of said bonds, shall deliver the same to the Borough Treasurer.

Statement of Taxes and Assessments Due on Properties Situate in the Borough of Runnemede, Camden County, New Jersey

Prudential Insurance Co., Owner, Block 58, Lot 2a

Balance Sidewalk	$237.33
1933 Taxes	95.20
1934 "	92.14
1935 "	97.92
Interest	36.39
Total	$558.98

Thomas A. Dilley, Owner, Block 63, Lot 14

Balance Sidewalk		305
1933 Taxes		92
1934 "		110
¾ of 1935 Taxes	(Bal. Paid)	86
Interest		98
Total		693

[fol. 279] Wallie H. Becker, Inc., Owner, Block 107, Lot

1932 Taxes	$124
1933 "	128
1934 "	124
½ of 1935 Taxes	62
Interest	26
Total	$465

Marie C. Halsted, Owner, Block 60, Lot 13a

Balance Sidewalk	127
Interest	24
Total	$152

Francis Halsted, Owner, Block 60, Lot 10

Balance Sidewalk	57
Interest	5
Total	62

Winfield VanDexter, Owner, Block 38, Lots 5-6-7

Balance Sidewalk	466
1928 Taxes	36
1929 "	34
1930 "	34
Interest & Cost of Sale	116
1931 Taxes	38
1932 "	51
1933 "	57
1934 "	56
Interest	161
Total	$1,054

Victory Building and Loan Association, Owner, Block 98, Lot 3

Balance Sidewalk	62.40
1933 Taxes	104.60
1934 "	101.27
1935 "	106.56
Interest	22.54
Total	397.37

Lewis Toof, Owner, Block 136, Lot 14

Balance Sidewalk	74.54
Interest	1.48
Total	76.02

Prudential Insurance Co., Owner, Block 48, Lot 5

Balance Sidewalk	60.04
1933 Taxes	73.50
1934 "	139.57
1935 "	148.32
Interest	31.17
Total	452.60

Harry W. Bealer, Inc., Owner, Block 35, Lot 11a

1930 Taxes	113.58
Interest & Cost of Sale 11/5/31	12.50
1931 Taxes	127.15
1932 "	187.20
1933 "	191.24
1934 "	185.09
1935 "	195.84
Interest	97.35
Total	$1,109.95

[fol. 280-282] Summary—Total Amounts Due

Prudential Insurance Co., Owner, Block 58, Lot 2A	$558.99
Thomas A. Dilley, Owner, Block 63, Lot 14	69.49
Wallie H. Becker, Inc., Owner, Block 107, Lot 16	465.80
Francis Halsted, Owner, Block 60, Lot 10	62.29
Marie C. Halsted, Owner, Block 60, Lot 13A	152.03
Winfield VanDexter, Owner, Block 38, Lots 5-6-7	1,054.24
Victory Building & Loan Association, Owner Block 98, Lot 3	397.37
Lewis Toof, Owner, Block 136, Lot 14	76.02
Prudential Insurance Co., Owner, Block 48, Lot 2	452.60
Harry W. Bealer, Inc., Owner, Block 35, Lot 11A	1,109.96
Total	$5,022.79

Amounts Due Prior to January 1, 1934

Prudential Insurance Co. Block 58, Lot 2A	332.50
Thomas A. Dilley, Block 63, Lot 14	397.91
Wallie H. Becker, Inc., Block 107, Lot 16	252.48
Francis Halsted, Block 60, Lot 10	37.19
Marie C. Halsted, Block 60, Lot 13A	127.37
Winfield VanDexter, Block 38, Lots 5-6-7	$37.15
Victory Building & Loan Association, Block 98, Lot 3	167.00
Lewis Toof, Block 136, Lot 14	74.54
Prudential Insurance Co., Block 48, Lot 2	130.54
Harry W. Bealer, Inc. Block 35, Lot 11A	631.67
	$3,011.38

Total amount as per Summary above	5,022.79
Payment of the Borough of Runnemede Temporary Improvement Bonds #40-41-42 Dated November 1st, 1926, due November 1st, 1932, rate 5½% Denomination of $1,000.00 each	3,000.00
Balance to be paid in cash on or before December 28th, 1935	$2,022.79

7a. After a careful study of the items involved in the preceding schedules the following resolution was proposed:

7b. Resolved that the Municipal Finance Commission gives its formal consent in writing to the resolution set forth

above, each item being separately considered and individually acted upon by the Commission.

7c. Be it Further Resolved that such assent and approval is granted with the proviso that the payments received in satisfaction of the several individual items be made within fifteen days from the adoption of this resolution; with a further proviso that any cash payments received from taxes of 1933 and prior years be held in a reserve fund and said moneys after being deposited to be separately accounted for in said reserve fund and that any cash payments on account of the principal of any assessments included in said compromise be deposited in the trust accounts to be held therein.

7d. Be it Further Resolved that this approval is conditional upon the Borough Council making payments to the reserve funds within forty-eight hours after the receipt of any of the moneys referred to in the above schedule and upon further condition that the payments referred to represent all of the municipal liens or other charges now due against the properties hereinabove named.

7e. Be it Further Resolved that the assent hereinabove given is conditional upon all 1935 taxes being settled in full together with any accrued penalties thereon and further conditioned upon the first quarter of the 1936 taxes being paid in cash.

7f. On motion of Commissioner Woolston, seconded by Commissioner Darby, the foregoing resolution was adopted by a unanimous vote.

. . . . . .

[fol. 283] Meeting of January 22, 1936

1. A special meeting of the Municipal Finance Commission to consider the 1936 budget of the Borough of Runnemede was held in the Office of the State Auditor on Wednesday, January 22, 1936, with Commissioners Darby, Backes and Woolston present. Mayor May, Mr. Grossman representing Judge Varbalow and Messrs. Dorsett, Bowman and Gary were also present.

2. At the outset the Chairman clearly set forth the position of the Commission with respect to conducting budget

hearings in order that there might be no doubt as to the purpose or propriety thereof.

3. The various items of the budget as requested by the Borough Council were taken up in detail in each instance where the request varied from the recommendation of Mr. Dorsett.

4. The principal items in question were telephones, police, W. P. A. project costs, overseer of poor, repairs to Broadway Bridge and foreclosure costs. In some cases the Mayor suggested a lower figure than the request submitted by the Borough and in each case due note was taken of the various figures and the reasons for any changes or suggested changes.

5. After concluding the review of the budget requests, the following resolution was proposed by Commissioner Backes, seconded by Commissioner Woolston and adopted by a unanimous vote:

5a. Resolved that the various items of the budget of Runnemede discussed at this morning's meeting be referred to Mr. Dorsett of the State Auditor's staff and he and Mr. Bowman be directed to meet with the governing body of the Borough of Runnemede for the purpose of discussing and recommending a budget to the Borough Council and that Mr. Dorsett be directed to report the results of his findings and of the findings and wishes of the governing body to this Commission; all of such actions to be taken in accordance with the provisions and requirements of Chapter 292, P. L. 1935, Section one.

6. Following the conclusion of the consideration of the Borough budget, the budget of the Board of Education was considered in some detail and Mr. Bowman was directed to contact the Board of Education officials with respect to possible reductions therein and report back to this Commission at a later date.

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[fol. 284] Meeting of January 17, 1936

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5. Consideration of the 1936 budget of the Borough of Runnemede was set for Wednesday, January 22nd, at 10:30

o'clock A. M. at which time it was directed that the Mayor of the Borough of Runnemede be directed to be present together with such members of council as might wish to appear before the Commission.

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[fols. 285-286] Meeting of January 3, 1936

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6. Letter from Borough Clerk Gaunt to the effect that nothing formal has been transmitted to him relative to the 1936 budget was duly noted and directed to be filed. There was also filed a letter from Borough Clerk Gaunt to the effect that the 8th of January would not be a satisfactory date for a budget hearing. Due to the fact that the time for the consideration of budgets is limited and the hearing calendar is tied in with other meetings, the Secretary was directed to wire the clerk as follows:

January 3, 1936.

John Gaunt, Clerk, Borough of Runnemede, Runnemede, N. J.:

Schedule of budget hearings makes it impossible to change our dates at this time. Representative does not need formal meeting of governing body but needs presence of interested officers.

G. C. Skillman, Secretary Municipal Finance Commission.

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[fol. 287] Meeting of December 13, 1935

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f. The Secretary directed attention to the fact that under date of November 18th forms for filing preliminary budget information for the year 1936 was forwarded to the Borough Clerk with the request that these forms be returned to the Commission before December 10th. No form has been filed for the Borough of Runnemede and the Commission through these minutes directs the attention of the governing body to this omission.

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[fols. 288-291] Meeting of December 6, 1935

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7. Letter from Borough Clerk Gaunt bearing date of December 2nd directing attention to the fact that the Borough Council had authorized foreclosures and receiverships on numerous properties was duly noted.

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[fols. 292-293] Meeting of November 1, 1935

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7. The matter of a tax sale was discussed and it was regularly moved, seconded and carried that this Commission recommend that the Collector proceed with a tax sale forthwith.

8. The matter of foreclosure of liens was discussed in some detail and it was regularly moved, seconded and carried that the governing body be informed that it was the consensus of opinion of this Commission that appropriate action be taken by the governing body to insure the institution and completion of foreclosure proceedings on all tax title liens now subject to foreclosure where the character of the property warrants such action.

8a. In connection with the above motion the Secretary was directed to call the attention of the Borough Collector and the Borough Clerk respectively to the action of this Commission and request that a progress report be available for the consideration of this Commission at the expiration of a thirty day period.

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[fol. 294] Meeting of October 4, 1935

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6. Report of auditing committee of the Board of Education for the fiscal year ending June 30, 1935 was filed and directed to be made part of the official minutes of this Commission.

7. Certified copy of resolution adopted by the Borough Council under date of October 3, 1935 was filed with this Commission and directed to be spread in full in these minutes:

Whereas, certain taxpayers of the Borough of Runnemede as hereinafter designated, tender Bonds Nos. 36, 37, 38, 39 and 46 of the Borough of Runnemede being Temporary Improvement Bonds, dated November 1st, 1926, due November 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars ($1,000.00) each, with interest thereon, as payment upon account of the municipal liens, taxes and assessments levied and assessed respectively on the following:

Walter H. Andrews, Owner, Block 12, Lot 15.
Walter H. Andrews, Owner, Block 12, Lot 3.
Nina D. Butler, Owner, Block 108, Lot 8.
Charles D. Bowers, Owner, Block 46, Lot 8.
Gloucester County Title & Mortgage Guarantee Co., Owner, Block 114, Lot 18.
Gloucester County Title & Mortgage Guarantee Co., Owner, Block 113, Lot 12.
Gloucester County Title & Mortgage Guarantee Co., Owner, Block 114, Lot 4.
Mary E. Volz, Owner, Block 95, Lot 10.
Barrington Building Loan, Block 121, Lot 17.
Board of Ministerial Pensions & Relief United Presbyterian Church of North America, Owner, Block 15, Lots 13-13a.
Charles MacKenzie, Block 58, Lot 4.
Wm. R. Cundy, Block 44, Lot 22.

[fol. 295] For the purpose of taking credit therefor in the sum of One Thousand Dollars each, being the principal of the said bonds; and further tender the payment of the balance of said taxes and municipal liens, together with all taxes and municipal liens subsequent to January 1st, 1934, and up to and including the taxes assessed for the year 1934, in full, with interest upon all delinquent taxes and assessments, in cash:

Now, Therefore, be it Resolved by the Mayor and Borough Council of the Borough of Runnemede, in the County of Camden, New Jersey, that the Tax Collector of the Borough of Runnemede be and he is hereby authorized and directed to accept from the said owners said Bonds Nos. 36, 37, 38, 39 and 46 of the Temporary Improvement Bonds of the Borough of Runnemede, dated November 1st, 1926, due November 1st, 1932, interest rate 5¼ per centum, in

the denomination of One Thousand Dollars each, with interest due thereon, on account of the principal of taxes and municipal liens and assessments upon premises assessed in the names of the owners hereinabove recited and as hereinabove set forth, which fell due prior to January 1st, 1934, and to give credit therefor, for said bonds and interest, in the amount of the principal of said bonds only, to wit, One Thousand Dollars ($1,000.00) each, provided that the balance of the said municipal liens and taxes, together with taxes and municipal liens subsequent to January 1st, 1934, and the interest upon all delinquent taxes and municipal liens, be paid in full in cash; and, provided further, that said payment shall be made within fifteen days after the written assent of the Municipal Finance Commission to the adoption of this resolution shall have been received; and

Be it Further Resolved that the said Tax Collector, upon receipt of said bonds, shall deliver the same to the Borough Treasurer.

Dated October 3rd, 1935.

Statement of Taxes and Assessments Due on Properties Situate in the Borough of Runnemede, Camden County, New Jersey

Walter H Andrews, Owner, Block 12, Lot 15

1931 Taxes	$104.72
1932 Taxes	110.98
1933 Taxes	115.80
1934 Taxes	108.40
¾ of 1935 Taxes	84.70
Interest	73.16
Total	597.76

Walter H. Andrews, Owner, Block 12, Lot 13

1931 Taxes	104.72
1932 Taxes	102.96
1933 Taxes	106.40
1934 Taxes	102.98
¾ of 1935 Taxes	80.46
Interest	69.11
Total	566.63

Nina D. Butler, Owner, Block 108, Lot 8

1929 Taxes	107.07
1930 Taxes	104.62
1931 Taxes	117.11
Interest & Cost	32.15
1932 Taxes	102.96
1933 Taxes	105.84
1934 Taxes	102.44
¾ of 1935 Taxes	82.08
Interest	60.42
Total	814.69

[fol. 296] Charles D. Bowers, Owner, Block 46, Lot 8

1933 Taxes	$105.44
1934 Taxes	102.08
1935 Taxes	106.56
Interest	24.55
Total	338.63

Gloucester County Title & Mortgage Guarantee Co., Owner, Block 114, Lot 18

1929 Taxes	51.35
1930 Taxes	105.69
Interest & Cost	22.26
1931 Taxes	118.31
1932 Taxes	110.45
1933 Taxes	113.40
1934 Taxes	109.76
½ of 1935 Taxes	54.88
Interest	109.86
Total	795.96

Gloucester County Title & Mortgage Guarantee Co., Owner, Block 113, Lot 12

1929 Taxes	51.35
1930 Taxes	105.69
Interest & Cost	22.56
1931 Taxes	120.70
1932 Taxes	112.79
1933 Taxes	123.20
1934 Taxes	113.82
½ of 1935 Taxes	56.91
Interest	114.10
Total	821.12

Gloucester County Title & Mortgage Guarantee Co., Owner, Block 114, Lot 4

Sidewalk	118.31
1931 Taxes	127.23
1932 Taxes	128.76
1933 Taxes	127.00
1934 Taxes	121.95
¾ of 1935 Taxes	95.28
Interest	114.02
Total	832.55

Mary E. Volz, Owner, Block 95, Lot 10

Sidewalk	41.60
Interest	2.52
¾ of 1935 Paid	
Total	44.12

Barrington Building Loan, Owner, Block 121, Lot 17

Sidewalk	55.25
1931 Taxes	120.50
1932 Taxes	117.00
1933 Taxes	121.96
1934 Taxes	118.06
¾ of 1935 Taxes	91.72
Interest	82.18
Total	706.67

[fol. 297] Board of Ministerial Pensions & Relief United Presbyterian Church of North America, Owner, Block 15, Lot 13-13a

Sidewalk	$392.26
1926 Taxes	14.50
1927 Taxes	10.95
1928 Taxes	13.80
Interest & Cost	35.13
1929 Taxes	186.82
1930 Taxes	180.85
1931 Taxes	202.44
1932 Taxes	198.20
1933 Taxes	203.00
1934 Taxes	185.64
¾ of 1935 Taxes	145.05
Interest	347.52
Total	2,116.16

Charles MacKenzie, Owner, Block 58, Lot 4

Sidewalk	43.96
1932 Taxes	39.04
1933 Taxes	102.25
1934 Taxes	98.99
¾ of 1935 Taxes	76.58
Interest	26.30
Total	387.12

Wm. R. Cundy, Owner, Block 44, Lot 22

Sidewalk	69.26
1934 Taxes	117.89
¾ of 1935 Taxes	92.11
Interest	8.94
Total	288.20

Summary—Total Amounts Due

Walter H. Andrews, Block 12, Lot 15	$597.
Walter H. Andrews, Block 12, Lot 13	566.
Nina D. Butler, Block 108, Lot 8	814.
Charles D. Bowers, Block 46, Lot 8	338.
Gloucester County Title & Mortgage Guarantee Co., Block 114, Lot 18	795.
Gloucester County Title & Mortgage Guarantee Co., Block 113, Lot 12	821.
Gloucester County Title & Mortgage Guarantee Co., Block 114, Lot 4	832.
Mary E. Volz, Block 95, Lot 10	44.
Barrington Building Loan, Block 121, Lot 17	706.
Board of Ministerial Pensions & Relief United Presbyterian Church of North America, Block 15, Lot 13-13a	2,116.
Charles MacKenzie, Block 58, Lot 4	387.
Wm. R. Cundy, Block 44, Lot 22	288.
Total	8,309.

[fols. 298-300] Amounts Due Prior to January 1, 1934

Walter H. Andrews, Block 12, Lot 15	$331.
Walter H. Andrews, Block 12, Lot 13	314.
Nina D. Butler, Block 108, Lot 8	569.
Charles D. Bowers, Block 46, Lot 8	105.
Gloucester County Title & Mortgage Guarantee Co., Block 114, Lot 18	521.
Gloucester County Title & Mortgage Guarantee Co., Block 113, Lot 12	536.
Gloucester County Title & Mortgage Guarantee Co., Block 114, Lot 4	501.
Mary E. Volz, Block 95, Lot 10	41.
Barrington Building Loan, Block 121, Lot 17	414.
Board of Ministerial Pensions & Relief United Presbyterian Church of North America, Block 15, Lot- 13-13a	1,437.
Charles MacKenzie, Block 58, Lot 4	185.
Wm. R. Cundy, Block 44, Lot 22	69.
Total	5,028.

Total amount as per summary above	$8,309.61
Payment of the Borough of Runnemede Temporary Bonds Nos. 36, 37, 38, 39 and 46, dated November 1st, 1926, due November 1st, 1932, rate 5¼% denomination of $1,000 each	5,000.00
Balance to be paid in cash on or before September 23rd, 1935	$3,309.61

7a. After a careful study of the items involved in the preceding schedules the following resolution was proposed:

7b. Resolved that the Municipal Finance Commission give its formal consent in writing to the resolution set forth above, each item being separately considered and individually acted upon by the commission.

7c. Be it Further Resolved that such assent and approval is granted with the proviso that the payments received in satisfaction of the several individual items be made within fifteen days from the adoption of this resolution; with a further proviso that any cash payments received from taxes of 1933 and prior years be held in a reserve fund and said moneys after being deposited to be separately accounted for in said reserve fund and that any cash payments on account of the principal of any assessments included in said compromise be deposited in the trust accounts to be held therein.

7d. Be it Further Resolved that this approval is conditional upon the Borough Council making payments to the reserve funds within forty-eight hours after the receipt of any of the moneys referred to in the above schedule and upon further condition that the payments referred to represent all of the municipal liens or other charges now due against the properties hereinabove named.

7e. Be it Further Resolved that such assent is granted with the proviso that the payments received in satisfaction of the several individual items include the August 1st installment (3rd quarter) of 1935 in cash.

7f. On motion of Commissioner Woolston, seconded by Commissioner Darby, the foregoing resolution was adopted by an unanimous vote.

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[fol. 301] Meeting of September 6, 1935

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7. Letter from Judge Varbalow addressed to the Secretary under date of August 28th was considered. This communication had to do with W. P. A. projects in Runnemede and the Secretary advised that he had discussed the matter with Judge Varbalow following the receipt of the letter advising him that it would be impossible to bring the matter before the Commission until September 6th. As a result of this conversation Judge Varbalow advised him that W. P. A. applications were being made for a number of projects which applications would later be submitted to this commission for formal consideration. The Secretary stated that he had recommended that so far as possible these applications should be confined to projects which could be financed out of current appropriations as it would undoubtedly be impossible to procure the approval of any new or outside financing.

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[fols. 302-303] 12. Letter from Borough Attorney Varbalow dated August 31st requesting the presence of Mr. Gary on Thursday evening, September 5th, was noted for the records. The Secretary advised that he had wired Judge Varbalow that it would be impossible for Mr. Gary to be present at this meeting. The Commission is of the opinion that due to the large number of municipalities under the jurisdiction of the Commission, and the very limited personnel, it would be impossible to assign Mr. Gary to attend evening meetings held in the various municipalities at least until the Commission is able to enlarge its staff to a point where this can be done without operating to the detriment of other essential services.

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[fol. 304] Meeting of August 26, 1935

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3. Certified copy of resolution adopted by the Borough Council under date of August 1, 1935 was filed with the Commission and directed to be spread in full in these minutes:

Whereas, certain taxpayers of the Borough of Runnemede as hereinafter designated, tender Bond No. 69 of the Borough of Runnemede, being Temporary Improvement Bond, dated September 1st, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand ($1000.00) Dollars, with interest thereon, and Bonds Nos. 28, 29, 30, 31, 32, 33, 34, and 35 of the Borough of Runnemede, being Temporary Improvement Bonds, dated Nov. 1st, 1926 due Nov. 1st, 1932, interest rate 5½ per centum, in the denomination of One Thousand ($1000.00) Dollars each, or a total of Eight Thousand ($8000.00) Dollars, with interest thereon, as payment upon account of the municipal liens, taxes and assessments levied and assessed respectively on the following:

Woodlynne Building Loan, Owner, Block 35, Lot 11.
Woodlynne Building Loan, Owner, Block 12, Lot 18.
Angelo Mondelli, Owner, Block 97, Lot 4.
Louise W. Lore, Owner, Block 113, Lot 35.
Henry Rosenfeld, Jr., Owner, Block 44, Lot 11.
Edward R. Sickler, Owner, Block 38, Lot 1.
James Stocks, Owner, Block 91, Lot 11.
John M. Burke, Owner, Block 89, Lot 6.
John M. Burke, Owner, Block 89, Lot 11.
Citizens Building Loan, Owner, Block 51, Lot 7.
Barrington Building Loan, Owner, Block 49, Lot 12.
Harvey Longenecker, Owner, Block 121, Lot 16.
James R. Marston, Owner, Block 129, Lot 3.
Blanche Crump, Owner, Block 106, Lot 11.
John Hancock Insurance Co., Owner, Block 59, Lot 2.
John Hancock Insurance Co., Owner, Block 59, Lot 3.
Blackwood Building Loan, Owner, Block 141, Lot 4.
Barrington Building Loan, Owner, Block 142, Lot 6.
Jane R. Gaunt, Owner, Block 39, Lot 5.
Metropolitan Life Insurance Co., Owner, Block 39, Lot 13B.
J. Ralph Styer, Owner, Block 58, Lot 3.
John J. Tull, Owner, Block 49, Lot 158.
Albert L. Turnley, Owner, Block 114, Lot 16.
First Camden National Bank, Owner, Block 107, Lot 12.
Gloucester County M. & G. T. Co., Owner, Block 76, Lot 8f.
Gloucester County M. & G. T. Co., Owner, Block 113, Lot 11.

Gloucester County M. & G. T. Co., Owner, Block 1
Lot 12.
Gloucester County M. & G. T. Co., Owner, Block 9
Lot 23a.
Gloucester County M. & G. T. Co., Owner, Block 12
Lot 15.
Gloucester County M. & G. T. Co., Owner, Block 11
Lot 14.
Gloucester County M. & G. T. Co., Owner, Block 5
Lot 1,

[fol. 305] for the purpose of taking credit therefor in th sum of Nine Thousand Dollars, being the principals of sai bonds; and further tender the payment of the balance o said taxes and municipal liens, together with all taxes an municipal liens subsequent to January 1st, 1934, and up t and including the taxes assessed for the year 1934, in ful with interest upon all delinquent taxes and assessments, i cash:

Now, Therefore, be it Resolved by the Mayor and Boroug Council of the Borough of Runnemede, in the County o Camden, New Jersey, that the Tax Collector of the Boroug of Runnemede be and he is hereby authorized and directed t accept from the said owners said Bond No. 69 of the Boroug of Runnemede, being Temporary Improvement Bond, date September 1st, 1926, due September 1st, 1932, interest rat 5¼ per centum, in the denomination of One Thousan ($1,000.00) Dollars, with interest thereon, and Bonds Nos 28, 29, 30, 31, 32, 33, 34 and 35 of the Borough of Runnemede being Temporary Improvement Bonds dated November 1st 1926, due November 1st, 1932, interest rate 5½ per centum in the denomination of One Thousand ($1,000.00) Dollar each, or a total of Eight Thousand ($8,000.00) Dollars, wit interest thereon, on account of the principal of taxes an municipal liens and assessments upon premises assessed i the names of the owners hereinabove recited and as herein above set forth, which fell due prior to January 1st, 1934 and to give credit therefore, for said bonds and interest i the amount of the principal of said bonds only, to wit, Nin Thousand ($9,000.00) — provided that the balance of the sai municipal liens and taxes together with taxes and municipa liens subsequent to January 1st, 1934, and the interest upo all delinquent taxes and municipal liens, be paid in full i cash; and, provided further, that said payments shall b

made within fifteen days after the written assent of the Municipal Finance Commission to the adoption of this resolution shall have been received; and

Be it Further Resolved that the said Tax Collector, upon receipt of said bond, shall deliver the same to the Borough Treasurer.

Dated August 1st, 1935.

Statement of Taxes and Assessments Due on Properties Situate in the Borough of Runnemede, Camden County, New Jersey

Woodlynne Building Loan, Owner, Block 35, Lot 11

Balance 1930 Taxes	$3.44
Int. & Cost to date of sale	12.50
1931 Taxes	127.15
1932 Taxes	187.20
Interest	81.05
Total	411.34

(1933-34 & ½ of 1935 Taxes paid.)

Woodlynne Building Loan, Owner, Block 12, Lot 18

Balance 1930 Taxes	15.60
Int. & Cost to date of sale	11.59
1931 Taxes	95.60
1932 Taxes	86.58
Interest	53.87
Total	263.24

(1933-34 & ½ of 1935 Taxes paid.)

[fol. 306] Angelo Mondelli, Owner, Block 97, Lot 4

Balance Sidewalk	$209.68
1931 Taxes	59.94
1932 Taxes	105.30
1933 Taxes	109.20
1934 Taxes	105.69
½ of 1935 Taxes	52.84
Interest	118.32
Total	760.97

Louise W. Lore, Owner, Block 113, Lot 35

Balance 1929 Taxes	6.70
1930 Taxes	88.61
Int. & Cost to date of sale	54.11
Balance Sidewalk	113.57
1931 Taxes	99.19
1932 Taxes	91.73
1933 Taxes	92.40
1934 Taxes	89.43
½ of 1935 Taxes	44.70
Interest	132.08
Total	812.52

Henry Rosenfeld, Jr., Block 44, Lot 11

Balance Sidewalk	30.30
1932 Taxes	64.01
1933 Taxes	114.24
1934 Taxes	110.57
½ of 1935 Taxes	55.28
Interest	22.13
Total	396.53

Edward R. Sickler, Block 38, Lot 1

Balance Sidewalk	1,375.06
1931 Taxes	296.40
1932 Taxes	293.50
1933 Taxes	274.28
1934 Taxes	250.05
½ of 1935 Taxes	125.02
Interest	461.30
Total	3,075.61

James Stocks, Block 91, Lot 11

Balance Sidewalk	8.32
Interest	.48
Taxes for 1935 Paid	
Total	8.80

John M. Burke, Block 89, Lot 6

1933 Taxes	81.93
1934 Taxes	93.68
½ of 1935 Taxes	46.84
Interest	8.00
Total	230.45

John M. Burke, Block 89, Lot 11

1933 Taxes	6.82
1934 Taxes	7.86
½ of 1935 Taxes	3.92
Interest	2.00
Total	20.60

[fol. 307] Citizen Building Loan, Block 51, Lot 7

1933 Taxes	$94.24
1934 Taxes	91.24
Interest	24.09
Total	209.57

(½ of 1935 Taxes Paid).

Barrington Building Loan, Block 49, Lot 12

Balance Sidewalk	268.24
1932 Taxes	102.79
1933 Taxes	107.40
1934 Taxes	103.98
½ of 1935 —	51.98
Interest	99.85
Total	734.24

Harvey Longenecker, Block 121, Lot 16

Balance Sidewalk	87.22
1934 Taxes	20.60
½ of 1935 Taxes	10.30
Interest	8.84
Total	126.96

James R. Marston, Block 129, Lot 3

Balance Sidewalk	54.1
Interest	1.0
Total	55.2

(½ of 1935 Paid).

Blanche Crump, Block 106, Lot 11

Balance Sidewalk	27.7
½ of 1935 Taxes	5.1
Interest	2.4
Total	35.2

John Hancock Insurance Co., Block 59, Lot 3

Balance Sidewalk	30.7
Interest	2.2
Total	32.9

(½ of 1935 Taxes Paid.)

John Hancock Insurance Co., Block 59, Lot 2

Balance Sidewalk	30.7
Interest	2.2
Total	32.9

(½ of 1935 Taxes Paid.)

Blackwood Building Loan, Block 141, Lot 4

1933 Taxes	92.1
1934 Taxes	86.4
½ of 1935 Taxes	43.2
Interest	20.8
Total	242.6

Barrington Building Loan, Block 142, Lot 6

1932 Taxes	43.1
1933 Taxes	42.0
1934 Taxes	67.7
½ of 1935 Taxes	33.8
Interest	21.1
Total	207.8

[fol. 308] Jane R. Gaunt, Block 39, Lot 5

Balance Sidewalk	76.47
1931 Taxes	109.94
1932 Taxes	99.28
1933 Taxes	113.28
1934 Taxes	109.40
½ of 1935 Taxes	54.70
Interest	63.89
Total	626.96

Metropolitan Life Insurance Co., Block 39, Lot 13B

1933 Taxes	118.32
1934 Taxes	113.47
½ of 1935 Taxes	56.72
Interest	27.66
Total	316.17

J. Ralph Styer, Block 58, Lot 3

Balance Sidewalk	32.96
Interest	1.98
Total	34.94

(½ of 1935 Taxes Paid)

John J. Tull, Block 49, Lot 15b

Balance Sidewalk	68.78
½ of 1934 Taxes	38.54
½ of 1935 Taxes	40.88
Interest	21.54
Total	169.74

Albert L. Turnley, Block 114, Lot 16

Balance Sidewalk	33.61
Interest	2.04
Total.	35.65

First Camden National Bank, Block 107, Lot 12

1932 Taxes	59.23
1933 Taxes	121.90
1934 Taxes	118.11
½ or 1935	59.05
Interest	29.12
Total	387.41

Gloucester County M. & G. T. Co., Block 76, Lot 8F

Balance Sidewalk	93.22
1931 Taxes	106.89
1932 Taxes	109.98
1933 Taxes	113.40
1934 Taxes	109.76
½ of 1935 Taxes	54.88
Interest	82.68
Total	670.81

Gloucester County M. & G. T. Co., Block 113, Lot 11

1929 Taxes	17.40
1930 Taxes	87.54
Interest & Cost to Date of Sale	15.50
1931 Taxes	112.33
1932 Taxes	117.94
1933 Taxes	123.20
1934 Taxes	113.82
½ of 1935 Taxes	56.91
Interest	94.60
Total	739.24

[fol. 309] Gloucester County M. & G. T. Co., Block 18, Lot 12

1932 Taxes	$91.26
1933 Taxes	92.40
1934 Taxes	89.43
½ of 1935 Taxes	44.71
Interest	59.42
Total	377.22

Gloucester County M. & G. T. Co., Block 92, Lot 23A

1929 Taxes	54.62
1930 Taxes	106.75
Interest & Cost to Date of Sale	22.02

1931 Taxes	119.50
1932 Taxes	112.15
1933 Taxes	99.40
1934 Taxes	108.40
½ of 1935 Taxes	54.20
Interest	109.78
Total	786.82

Gloucester County M. & G. T. Co., Block 121, Lot 15

1932 Taxes	39.11
1933 Taxes	76.04
1934 Taxes	97.02
½ of 1935 Taxes	48.51
Interest	20.64
Total	281.32

Gloucester County M. & G. T. Co., Block 113, Lot 14

1928 Taxes	8.05
1929 Taxes	95.05
1930 Taxes	92.88
Interest & Cost to Date of Sale	30.97
1931 Taxes	103.97
1932 Taxes	91.73
1933 Taxes	92.40
1934 Taxes	89.43
½ of 1935 Taxes	44.71
Interest	110.99
Total	760.18

Gloucester County M. & G. T. Co., Block 51, Lot 1

1928 Taxes	133.40
1929 Taxes	126.73
1930 Taxes	125.97
Interest & Cost to Date of Sale	71.47
1931 Taxes	141.01
1932 Taxes	138.06
1933 Taxes	144.20
1934 Taxes	136.85
½ of 1935 Taxes	68.42
Interest	209.05
Total	1,295.16

[fol. 310]

	Amounts Due Prior to 1/1/34	Total Amounts Due
Woodlynne Building Loan, Block 35, Lot 11	330.29	411.34
Woodlynne Building Loan, Block 12, Lot 18	209.37	263.24
Angello Mondelli, Block 97, Lot 4	484.12	760.97
Louise W. Lore, Block 113, Lot 35	546.31	812.52
Henry Rosenfeld, Jr., Block 44, Lot 11	208.55	396.53
Edward R. Sickler, Block 38, Lot 1	2,239.24	3,075.61
James Stocks, Block 91, Lot 11	8.32	8.80
John M. Burke Block 89, Lot 6	81.93	230.45
John M. Burke, Block 89, Lot 11	6.82	20.60
Citizens Building Loan, Block 51, Lot 7	94.24	209.57
Barrington Building Loan, Block 49, Lot 12	478.43	734.24
Harvey Longenecker, Block 121, Lot 16	87.22	126.96
James R. Marston, Block 129, Lot 3	54.19	55.27
Blanche Crump, Block 106, Lot 11	27.70	35.27
John Hancock Insurance Co., Block 59, Lot 2	30.75	32.97
John Hancock Insurance Co., Block 59, Lot 3	30.76	32.98
Blackwood Building Loan, Block 141, Lot 4	92.12	242.64
Barrington Building Loan, Block 142, Lot 6	85.12	207.85
Jane R. Gaunt, Block 39, Lot 5	398.97	626.96
Metropolitan Life Ins. Co., Block 39, Lot 13B	118.32	316.17
J. Ralph Styer, Block 58, Lot 3	32.96	34.94
John J. Tull, Block 49, Lot 15B	68.78	169.74
Albert L. Turnley, Block 114, Lot 16	33.61	35.65
First Camden National Bk., Block 107, Lot 12	181.13	387.41
Gloucester County M. & G. T. Co., Block 76, Lot 8F	423.49	670.81
Gloucester County M. & G. T. Co., Block 113, Lot 11	473.91	739.24
Gloucester County M. & G. T. Co., Block 18, Lot 12	183.66	377.22
Gloucester County M. & G. T. Co., Block 92, Lot 23A	514.44	786.82
Gloucester County M. & G. T. Co., Block 121, Lot 15	115.15	281.32
Gloucester County M. & G. T. Co., Block 113, Lot 14	515.05	760.18
Gloucester County M. & G. T. Co., Block 51, Lot 1	880.84	1,295.16
Amount due prior to January 1st, 1934	9,035.79	
Summary of Total Amounts Due		14,139.43
Total Amount as Per Summary Above		14,139.43
Payment of Borough of Runnemede Temporary Improvement Bond #69 Dated 9/1/26 Due 9/1/32 Rate 5¼% Denomination $1,000	$1,000.00	
Payment of Borough of Runnemede Temporary Improvement Bonds 28 to 35 Inclusive Dated 11/1/26 Due 11/1/32 Rate 5½% Denomination of $1,000.00 Each	8,000.00	9,000.00
Balance to be Paid in Cash on or Before 7/29/35		$5,139.43

3a. After a careful study of the items involved in the preceding schedules the following resolution was proposed:

3b. Resolved that the Municipal Finance Commission give its formal consent in writing to the resolution set forth above.

[fol. 311] 3c. Be it Further Resolved that such assent and approval is granted with the proviso that the payments received in satisfaction of the several individual items include the August first installment (3rd quarter) of 1935 taxes in cash on or before the date of settlement and that settlement be made within fifteen days from the adoption of this resolution; with a further proviso that any cash payments received from taxes of 1933 and prior years be held in a reserve fund and said moneys after being deposited to be separately accounted for in said reserve fund and that any cash payments on account of the principal of any assessments included in said compromise be deposited in the trust accounts to be held therein.

3d. Be it Further Resolved that this approval is conditional upon the Borough Council making payments to the reserve funds within forty-eight hours after the receipt of any of the moneys referred to in the above schedule and upon further condition that the payments referred to represent all of the municipal liens or other charges now due against the properties hereinabove named.

3e. On motion of Commissioner Backes, seconded by Commissioner Woolston the foregoing resolution was adopted by an unanimous vote.

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[fol. 312] Meeting of July 22, 1935

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2. There was presented for consideration of the Municipal Finance Commission copy of a resolution adopted by the Mayor and Council of the Borough of Runnemede pertaining to the proposed lease agreement between the Borough of Runnemede and the Runnemede Theatres, Inc. After due consideration the following resolution was pro-

posed by Commissioner Backes, seconded by Commissione Darby and adopted by an unanimous vote:

2a. Resolved that the assent of the Municipal Finan Commission be given to the proposed lease between t Borough of Runnemede and the Runnemede Theatres, In a copy of which lease is attached to a certification ma by the Borough Clerk of the Borough of Runnemede to th Commission under date of July 20, 1935.

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[fol. 313] Meeting of July 12, 1935

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3. The following resolution was proposed by Commi sioner Backes, seconded by Commissioner Woolston a adopted by an unanimous vote:

Whereas Chapter 258 of the Laws of 1935 provides amo other things that wherever the Municipal Finance Commi sion is functioning in a municipality having a school di trict coterminous therewith which is governed by the pr visions of Article VII of the Act to which this act is a su plement, hereinafter referred to as the "School Law", t Commission shall have power from time to time to prepa and certify to the Board of Education of such school distri in the manner and mode of procedure provided in the co mission act, resolutions providing for the funding or r funding of notes or bonds or other indebtedness of su school district, and the interest thereon, which the commi sion shall have found after public hearing to be outstan ing and unpaid and to be due or to become due which fundi shall be carried out in accordance with an "Act concerni municipal finances" and whereas the Borough of Runn mede and the School District are coterminous,

Now, Therefore, Be it Resolved by the Municipal Finan Commission that this Commission intends to exercise of the powers conferred upon said Municipal Finance Co mission by Section 14 of said act of 1935 and hereby giv notice to the Board of Education of the School District the Borough of Runnemede, in the County of Camden and all other persons interested of its intention to so exerci all of the powers conferred by said section.

Be it Further Resolved that a copy of this resolution sh be certified to the District Clerk of said school district

mailing to said district clerk by first class mail a certified copy of the minutes of this meeting.

4. The following resolution was proposed by Commissioner Backes, seconded by Commissioner Woolston and adopted by an unanimous vote.

Whereas pursuant to the provisions of chapter 292 of the Session Laws of 1935, it is provided that whenever pursuant to "an act concerning municipal finances", this Commission is functioning in any municipality, the auditor appointed by the Commission in and for such municipality shall upon the adoption of a resolution of this commission have with respect to such municipality authority among other things to review all contracts prior to their execution and authorization by the governing body, to make recommendations concerning capital improvements and attend all meetings of the governing body and

Whereas it is the opinion of this Commission that the auditor acting for this Commission in and for the Borough of Runnemede, county of Camden should have the authority hereinabove set forth.

[fols. 314-315] Now, Therefore, be it resolved that the auditor acting for the Municipal Finance Commission shall have authority to review all contracts prior to their execution, to make recommendations concerning capital improvements, to attend all meetings of the governing body and to make appropriate recommendations to this Commission with respect thereto.

Be it Further Resolved that the auditor to this Commission be directed to make such recommendations to the Commission as he may deem appropriate and proper in connection with the powers and duties vested in this Commission by section three of the aforementioned act and

Be it Further Resolved that a copy of this resolution be certified to the governing body by mailing by first class mail a certified copy of the minutes of this meeting to the municipal clerk.

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9. Certified copy of resolution adopted by the Borough Council under date of June 6th relative to the purchase of past due sewer bonds was duly considered and assent given thereto by motion duly made and seconded, based on the

statement of Auditor Holcombe that the transaction was proper and the price fair.

10. Letters from Borough Clerk Gaunt and Solicitor Varbalow with regard to the proposed lease of the Runnemede Theatre was duly noted for the records and directed to be filed.

10a. The matter of leasing the Runnemede Theatre by the Borough in accordance with the terms of a lease duly filed with this Commission was carefully reviewed and after due consideration, the following motion was proposed by Commissioner Backes, duly seconded and adopted by an unanimous vote: That the proposed lease between the Borough of Runnemede and the Runnemede Theatres, Incorporated be disapproved.

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[fols. 316-319] Meeting of June 7, 1935

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7. Notice being used by the Tax Collector to collect delinquent taxes was reviewed by the Commission and directed to be filed.

8. Letter from Borough Solicitor Varbalow bearing date of May 29th and copy of a proposed lease of the Runnemede Theatre was reviewed at some length. Action on the proposed lease was deferred until all members of the Commission had an opportunity to study it in further detail.

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[fol. 320] Meeting of April 26, 1935

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5. Letter from C. Armel Nutter, President of the Nutter Mortgage Service with respect to certain property in the Borough of Runnemede was carefully considered by the Commission and it was directed that Mr. Nutter be advised that the Commission could not see its way clear to assent to the Proposal set forth in his letter. The Commission stated further that Mr. Nutter should be advised that a representative of this Commission would review the property at first hand and render a further report thereon at a later date but

that unless there were some good reasons not now apparent, the Commission could not see its way clear to assent to a sizable reduction in principal amounts due.

6. Certified copies of resolutions adopted by the Borough Council under dates of April 4th 1935 and April 22nd 1935 respectively were filed with this Commission and directed to be spread in full in these minutes.

(1) Whereas, certain taxpayers of the Borough of Runnemede as hereinafter designated, tender Bonds Nos. 64 and 65 of the Borough of Runnemede, being Temporary Improvement Bonds, dated September 1st, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars ($1,000.00) each, with interest thereon, as payment upon account of the municipal liens, taxes and assessments levied and assessed respectively on the following:

Anthony DeRano, Owner, Block 50, Lot 2.
Mary M. Petry, Owner, Block 35, Lot 7.
R. Blanche Ruggles, Owner, Block 64, Lot 7.
Elizabeth W. Miller, Owner, Block 113, Lot 8.
Jane R. Gaunt, Owner, Block 113, Lot 19.
Lydia J. Carkk, Owner, Block 113, Lot 29.
J. H. Fritchey, Owner, Block 44, Lots 10-12.
Hammonton Building Loan, Owner, Block 6, Lot 11.
William Cook, Owner, Block 138, Lot 5.
Letita Carney, Owner, Block 58, Lot 2.
Forrest R. Henry, Owner, Block 108, Lot 20.
John G. Loll, Owner, Block 57, Lot 5.
Hannah C. Reeve, Owner, Block 42, Lot 5.
Clara B. Magin, Owner, Block 42, Lot 1A.
Jean P. DeRoche, Owner, Block 39, Lot 2.
Margaret McLallend, Owner, Block 72, Lot 7.
[fol. 321] Charles Goll, Owner, Block 96, Lot 7.
D. P. Childs (Trustee), Owner, Block 54, Lot 4.
John Stinsman, Owner, Block 95, Lot 13.
Rudy Bertram, Owner, Block 6, Lot 10.
Anthony Houck, Owner, Block 55, Lot 6.
James E. Price, Owner, Block 38, Lot 2.
Adolph Fulleman, Owner, Block 40, Lot 12.
Dorothea D. Weil, Owner, Block 55, Lot 9.
James R. Marston, Owner, Block 129, Lot 2.

Annie Mercer, Owner, Block 50, Lot 9.
Adolph Vietzen, Owner, Block 75, Lot 1.
J. Clois Shivers, Owner, Lot 61, Lot 23.
Hildagard Koehler, Owner, Block 13, Lot 11.
Jacob Miller, Owner, Block 129, Lot 7.
James Burns, Owner, Block 113, Lot 36.
John Gaunt, Owner, Block 55, Lot 2.

For the purpose of taking credit therefor in the sum of One Thousand Dollars each, being the principal of the said bonds; and further tender the payment of the balance of said taxes and municipal liens, together with all taxes and municipal liens subsequent to January 1st, 1934, and up to and including the taxes assessed for the year 1934, in full, with interest upon all delinquent taxes and assessments, in cash:

Now, Therefore, be it Resolved by the Mayor and Borough Council of the Borough of Runnemede, in the County of Camden, New Jersey, that the Tax Collector of the Borough of Runnemede be and he is hereby authorized and directed to accept from the said owners said bonds Nos. 64 and 65 of the Temporary Improvement Bonds of the Borough of Runnemede, dated September 1, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars each, with interest due thereon, on account of the principal of taxes and municipal liens and assessments upon premises assessed in the names of the owners hereinabove recited and as hereinabove set forth, which fell due prior to January 1st, 1934, and to give credit therefor, for said bonds and interest, in the amount of the principal of said bonds only, to wit, One Thousand Dollars ($1,000.00) each, provided that the balance of the said municipal leins and taxes, together with taxes and municipal liens subsequent to January 1st, 1934, and the interest upon all delinquent taxes and municipal liens, be paid in full in cash; and, provided further, that said payment shall be made within fifteen days after the written assent of the Municipal Finance Commission to the adoption of this resolution shall have been received; and

Be it Further Resolved that the said Tax Collector, upon receipt of said bond, shall deliver the same to the Borough Treasurer.

Dated April 4th 1935.

Statement of Taxes and Assessments Due on Properties Situate in the Borough of Runnemede, Camden County, New Jersey

Anthony DeRano, Owner, Block 50, Lot 2

Balance Sidewalk	$22.10
Interest	1.32
Total	$23.42

Taxes including the 1st quarter paid (1935)

[fol. 322] Mary M. Petry, Owner, Block 35, Lot 7

Balance Sidewalk	$60.46
Interest	4.32
Total	64.78

Taxes including the 1st Quarter 1935 paid.

R. Blanche Ruggles, Owner, Block 64, Lot 7

Balance Sidewalk	40.96
Interest	2.46
Total	43.42

Taxes including the 1st Quarter 1935 paid.

Elizabeth W. Miller, Owner, Block 113, Lot 8

Balance Sidewalk	34.05
Interest	2.04
Total	36.09

Taxes including the 1st Quarter 1935 paid.

Jane R. Gaunt, Owner, Block 113, Lot 19

Balance Sidewalk	33.61
Interest	2.04
Total	35.65

Taxes including the 1st Half 1935 paid.

Lydia J. Carll, Owner, Block 113, Lot 29

Balance Sidewalk	34.05
Interest	2.04
Total	36.09

Taxes including the 1st Quarter 1935 paid.

J. H. Fritchey, Owner, Block 44, Lots 10-12

Balance Sidewalk	60.60
Interest	3.60
Total	64.20

Taxes including the 1st Half 1935 paid.

Hammonton Building & Loan Association, Owner Block 6, Lot 11

Balance Sidewalk	31.92
Interest	.64
Total	32.56

Taxes including the 1st Quarter 1935 paid.

William Cook, Owner, Block 138, Lot 5

Balance Sidewalk	55.06
Interest	1.10
Total	56.16

Taxes including the 1st Half 1935 paid.

Letita Carney, Owner, Block 58, Lot 2

Balance Sidewalk	122.88
Interest	7.38
Total	130.26

Taxes including the 1st Quarter 1935 paid.

[fol. 323] Forrest R. Henry, Owner, Block 108, Lot 20

2nd half Taxes 1932	67.86
Taxes 1933	140.84
Taxes 1934	136.30
1st quarter Taxes 1935	34.07
Interest	40.61
Total	419.68

John G. Loll, Owner, Block 57, Lot 5

Balance Sidewalk	39.94
Interest	2.40
Total	42.34

Taxes including the 1st Quarter 1935 paid.

Hannah C. Reeve, Owner, Block 42, Lot 5

Balance Sidewalk	32.75
Interest	1.98
Total	34.73

Taxes including the 1st Quarter 1935 paid.

Clara B. Magin, Owner, Block 42, Lot 1A

Balance Sidewalk	182.69
1931 Taxes	13.40
1932 Taxes	13.12
1933 Taxes	15.68
1934 Taxes	20.60
1st Quarter 1935 Taxes	5.15
Interest	47.62
Total	298.26

Jean P. De Roche, Owner, Block 39, Lot 3

Balance Sidewalk	16.41
Interest	.96
Total	17.37

Taxes including the 1st Half 1935 paid.

Adolph Fulleman, Owner, Block 40, Lot 12

Balance Sidewalk	32.75
Interest	1.98
Total	34.73

Taxes including the 1st Quarter 1935 paid.

Dorothea D. Weil, Owner, Block 55, Lot 9A

Balance Sidewalk	121.62
Interest	6.56
Total	128.18

Taxes including 1st Quarter 1935 paid.

James R. Marston, Owner, Block 129, Lot 2

Balance Sidewalk	52.5
Interest	1.0
Total	53.6

Taxes including 1st Quarter 1935 paid.

Annie Mercer, Owner, Block 50, Lot 9

Balance Sidewalk	35.3
Interest	2.1
Total	37.4

Taxes including 1st Quarter 1935 paid.

[fol. 324] Adolph Vietzen, Owner, Block 75, Lot 1

Balance Sidewalk	61.5
Interest	3.7
Total	65.2

Taxes including 1st Quarter 1935 paid.

J. Clois Shivers, Owner, Block 61, Lot 23

Balance Sidewalk	177.5
Interest	23.0
Total	200.6

Taxes including 1st Quarter 1935 paid.

Hildagard Koehler, Owner, Block 13, Lot 11

Balance Sidewalk	97.69
Interest	5.88
Total	103.57

Taxes including 1st Quarter 1935 paid.

Jacob Miller, Owner, Block 129, Lot 7

Balance Sidewalk	105.08
Interest	2.10
Total	107.18

Taxes including 1st Quarter 1935 paid.

James Burns, Owner, Block 113, Lot 36

Balance Sidewalk	34.05
Interest	2.04
Total	36.09

Taxes including 1st Quarter 1935 paid.

John Gaunt, Owner, Block 55, Lot 2

Balance Sidewalk	40.96
Interest	2.46
Total	43.42

Taxes including 1st Quarter 1935 paid.

Margaret McLallend, Block 72, Lot 7—Owner

Balance Sidewalk	44.94
Interest	2.70
Total	47.64

Taxes including 1st half 1935 paid.

Charles Goll, Block 96, Lot 7—Owner

Balance Sidewalk	20.80
Interest	1.26
Total	22.06

Taxes including 1st quarter 1935 paid.

D. P. Childs (Trustee) Owner, Block 54, Lot 4

Balance Sidewalk	27.88
Interest	1.68
Total	29.56

Taxes including 1st quarter 1935 paid.

[fol. 325] John Stinsman, Owner, Block 95, Lot 13

Balance Sidewalk	20.80
Interest	1.26
Total	22.06

Taxes including 1st quarter 1935 paid.

Rudy Bertram, Owner, Block 6, Lot 10

Balance Sidewalk	31.92
Interest	.64
Total	32.56

Taxes including 1st quarter 1935 paid.

Anthony Houck, Owner, Block 55, Lot 6

Balance Sidewalk	40.96
Interest	2.46
Total	43.42

Taxes including 1st quarter 1935 paid.

James E. Price, Owner, Block 38, Lot 2

Balance Sidewalk	38.53
Interest	.57
Total	39.10

Taxes including 1st quarter 1935 paid.

Summary Total Amounts Due

Anthony De Rano, Block 50, Lot 2	$23.42
Mary M. Petry, Block 35, Lot 7	64.78
R. Blanche Ruggles, Block 64, Lot 7	43.42
Elizabeth W. Miller, Block 113, Lot 8	36.09
Jane R. Gaunt, Block 113, Lot 19	35.65
Lydia J. Carll, Block 113, Lot 29	36.09
J. H. Fritchey, Block 44, Lots 10-12	64.20
Hammonton B. & L. Assn., Block 6, Lot 11	32.56
William Cook, Block 138, Lot 5	56.16
Letita Carney, Block 58, Lot 2	130.26
Forrest R. Henry, Block 108, Lot 20	419.68
John Loll, Block 57, Lot 5	42.34
Hannah C. Reeve, Block 42, Lot 5	34.73
Clara B. Magin, Block 42, Lot 1A	298.26
Jean P. De Roche, Block 39, Lot 3	17.37
Margaret McLallend, Block 72, Lot 7	47.64
Charles Goll, Block 96, Lot 7	22.06
D. P. Childs (Trustee), Block 54, Lot 4	29.56
John Stinsman, Block 95, Lot 13	22.06
Rudy Bertram, Block 6, Lot 10	32.56
Anthony Houck, Block 55, Lot 6	43.42
James E. Price, Block 38, Lot 2	39.10
Adolph Fulleman, Block 40, Lot 12	34.73
Dorothea D. Weil, Block 55, Lot 9	128.18
James R. Marston, Block 129, Lot 2	53.60
Annie Mercer, Block 50, Lot 9	37.46
Adolph Vietzen, Block 75, Lot 1	65.29
J. Clois Shivers, Block 61, Lot 23	200.65
Hildagard Koehler, Block 13, Lot 11	103.57
Jacob Miller, Block 129, Lot 7	107.18
James Burns, Block 113, Lot 36	36.09
John Gaunt, Block 55, Lot 2	43.42
Total	$2,381.58

[fol. 326] Amounts Due Prior to January 1st, 1934

Anthony De Rano, Block 50, Lot 2	$22.1
Mary M. Petry, Block 35, Lot 7	60.4
R. Blanche Ruggles, Block 64, Lot 7	40.9
Elizabeth W. Miller, Block 113, Lot 8	34.0
Jane R. Gaunt, Block 113, Lot 19	33.61
Lydia J. Carll, Block 113, Lot 29	34.05
J. H. Fritchey, Block 44, Lots 10-12	60.60
Hammonton B. & L. Assn., Block 6, Lot 11	31.92
William Cook, Block 138, Lot 5	55.06
Letita Carney, Block 58, Lot 2	122.88
Forrest R. Henry, Block 108, Lot 20	208.70
John G. Loll, Block 57, Lot 5	39.94
Hannah C. Reeve, Block 42, Lot 5	32.75
Clara B. Magin, Block 42, Lot 1A	224.89
Jean P. De Roche, Block 39, Lot 3	16.41
Margaret McLallend, Block 72, Lot 7	44.94
Charles Goll, Block 96, Lot 7	20.80
D. P. Childs (Trustee), Block 54, Lot 4	27.88
John Stinsman, Block 95, Lot 13	20.80
Rudy Bertram, Block 6, Lot 10	31.92
Anthony Houck, Block 55, Lot 6	40.96
James E. Price, Block 38, Lot 2	38.53
Adolph Fulleman, Block 40, Lot 12	32.75
Dorothea D. Weil, Block 55, Lot 9	121.62
James R. Marston, Block 129, Lot 2	52.54
Annie Mercer, Block 50, Lot 9	35.36
Adolph Vietzen, Block 75, Lot 1	61.57
J. Clois Shivers, Block 61, Lot 23	177.59
Hildagard Koehler, Block 13, Lot 11	97.69
Jacob Miller, Block 129, Lot 7	105.08
James Burns, Block 113, Lot 36	34.05
John Gaunt, Block 55, Lot 2	40.96
Total	$2,003.42
Total amount as per summary above	2,381.58
Payment of the Borough of Runnemede temporary improvement bonds Nos. 64 and 65, dated September 1, 1926, due September 1, 1932, rate 5¼%, denomination of $1,000 each	2,000.00
Balance to be paid in cash on or before April 10, 1935	$381.58

(2) Whereas, certain taxpayers of the Borough of Runnemede as hereinafter designated, tender Bond No. 68 of the Borough of Runnemede, being a Temporary Improvement Bond, dated September 1st, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars ($1,000.00), with interest thereon, as payment upon account of the municipal liens, taxes and assessments levied and assessed respectively on the following:

[fol. 327] Ruth Beidler, Owner, Block 121, Lot 12-13.
Evered & Corado, Owner, Block 76, Lot 7.
Eleanor Fessman, Owner, Block 113, Lot 2.
Citizens B. & L., Owner, Block 12, Lots 2-3.
Walter C. Moore, Owner, Block 41, Lot 12.
Isaac Cook, Jr., Owner, Block 51, Lot 13.
Rebecca H. Johns, Owner, Block 58, Lot 19a.
Wm. R. Cundy, Owner, Block 44, Lot 14.
Harry Harding, Owner, Block 59, Lot 8.
Woodlynne Natl. Bank, Owner, Block 59, Lot 4.
Oran A. Wood, Owner, Block 53, Lot 5.
Aaron Manukian, Owner, Block 44, Lot 15.
Joseph Roddis, Owner, Block 92, Lot 4.

For the purpose of taking credit therefor in the sum of One Thousand Dollars, being the principal of the said bond; and further tender the payment of the balance of said taxes and municipal liens; together with all taxes and municipal liens subsequent to January 1st, 1934, and up to and including the taxes assessed for the year 1934, in full, with interest upon all delinquent taxes and assessments, in cash:

Now, Therefore, be it Resolved by the Mayor and Borough Council of the Borough of Runnemede, in the County of Camden, New Jersey, that the Tax Collector of the Borough of Runnemede be and he is hereby authorized and directed to accept from the said owners said Bond No. 68 of the Temporary Improvement Bonds of the Borough of Runnemede, dated September 1, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars, with interest due thereon, on account of the principal of taxes and municipal liens and assessments upon premises assessed in the names of the owners hereinabove recited and as hereinabove set forth, which fell due prior to January 1st, 1934, and to give credit therefor, for said bonds and interest, in the amount of the principal of said bond

only, to wit, One Thousand Dollars ($1,000.00), provided that the balance of the said municipal liens and taxes, together with taxes and municipal liens subsequent to January 1st, 1934 and the interest upon all delinquent taxes and municipal liens, be paid in full in cash; and, provided further, that said payment shall be made within fifteen days after the written assent of the Municipal Finance Commission to the adoption of this resolution shall have been received; and

Be is Further Resolved that the said Tax Collector, upon receipt of said bond, shall deliver the same to the Borough Treasurer.

Dated April 22nd 1935.

Statement of Taxes and Assessments Due on Properties Situate in the Borough of Runnemede, Camden County, New Jersey

Ruth Beidler, Owner, Block 121, Lot 12-13

Balance Sidewalk	$17.90
Interest	1.08
Total	18.98

Taxes including the 1st quarter 1935 paid.

[fol. 328] Evered & Corado, Owner, Block 76, Lot 7

Balance Sidewalk	$117.60
2nd half 1933 Taxes	40.64
1934 "	92.14
1st Quarter 1935 Taxes	23.03
Interest	52.77
Total	326.14

Eleanor Fessman, Owner, Block 113, Lot 2

Balance Sidewalk	68.16
Interest	4.00
Total	72.16

Taxes including the 1st quarter 1935 paid.

Citizens B. & L. Assn., Owner, Block 12, Lot 2-3

1933 Taxes	110.20
1934 "	106.67
1st Quarter 1935 Taxes	26.66
Interest	18.39
Total	261.92

Walter C. Moore, Owner, Block 41, Lot 12

Balance Sidewalk	32.75
Interest	1.98
Total	34.73

Taxes including the 1st quarter 1935 paid.

Isaac Cook Jr., Owner, Block 51, Lot 13

Balance Sidewalk	22.10
Interest	1.32
Total	23.42

Taxes including the 1st quarter 1935

Rebecca H. Johns, Owner, Block 58, Lot 19a

Balance Sidewalk	40.96
Interest	2.46
Total	43.42

Taxes including the 1st quarter 1935 paid.

Wm. R. Cundy, Owner, Block 44, Lot 14

Balance Sidewalk	27.59
Interest	1.62
Total	29.21

Taxes including the 1st quarter 1935 paid

Harry Harding, Owner, Block 59, Lot 8

Balance Sidewalk	39.
Interest	2.
Total	42.

Taxes including the 1st quarter 1935 paid.

Woodlynne National Bank, Block 59, Lot 4

Balance Sidewalk	143.4
1931 Taxes	45.1
1932 "	94.7
1933 "	98.0
1934 "	94.8
1st quarter 1935 "	23.7
Interest	50.0
Total	549.8

[fol. 329]

Oran A. Wood, Block 53, Lot 5, Owner

Balance Sidewalk	$40.9
Interest	2.4
Total	43.4

Taxes including the 1st half 1935 paid.

Aaron Manukian, Owner, Block 44, Lot 15

Balance Sidewalk	32.7
Interest	1.9
Total	34.7

Taxes including the 1st half 1935 paid.

Joseph Roddis, Owner, Block 92, Lot 4

Balance Sidewalk	31.2
Interest	1.8
Total	33.0

Taxes including the 1st half 1935 paid.

Summary Total Amounts Due

Ruth Beidler, Block 121, Lot 12-13	$18.98
Evered & Corado, Block 76, Lot 7	326.14
Eleanor Fessman, Block 113, Lot 2	72.16
Citizens B. & L. Assn., Block 12, Lot 2-3	261.92
Walter C. Moore, Block 41, Lot 12	34.73
Isaac Cook Jr., Block 51, Lot 13	23.42
Rebecca H. Johns, Block 58, Lot 19a	43.42
Wm. R. Cundy, Block 44, Lot 14	29.21
Harry Harding, Block 59, Lot 8	42.34
Woodlynne Natl. Bank, Block 59, Lot 4	549.89
Oran A. Wood, Block 53, Lot 5	43.42
Aaron Manukian, Block 44, Lot 15	34.73
Joseph Roddis, Block 92, Lot 4	33.06
Total	1,513.42

Amounts Due Prior to January 1st, 1934

Ruth Beidler, Block 121, Lot 12-13	17.90
Evered & Corado, Block 76, Lot 7	158.20
Eleanor Fessman, Block 113, Lot 2	68.16
Citizens B. & L., Block 12, Lot 2-3	110.20
Walter C. Moore, Block 41, Lot 12	32.75
Isaac Cook Jr., Block 51, Lot 13	22.10
Rebecca H. Johns, Block 58, Lot 19a	40.96
Wm. R. Cundy, Block 44, Lot 14	27.59
Harry Harding, Block 59, Lot 8	39.94
Woodlynne Natl. Bank, Block 59, Lot 4	381.38
Oran A. Wood, Block 53, Lot 5	40.96
Aaron Manukian, Block 44, Lot 15	32.75
Joseph Roddis, Block 92, Lot 4	31.20
Total	$1,004.04

Total amount as per summary above	$1,513.42
Payment of the Borough of Runnemede Temporary improvement bond #68 dated September 1, 1926, due September 1, 1932, rate 5¼%. Denomination of $1,000	1,000.00
Balance to be paid in cash on or before April 22nd 1935	$513.42

[fol. 330] 6a. After a careful study of the items involved in the preceding schedules the following resolution was proposed.

6b. Resolved that the Municipal Finance Commission give its formal consent in writing to the resolutions set forth above.

6c. Be it Further Resolved that such assent and approval is granted with the proviso that the payments received in satisfaction of the several individual items be made within fifteen days from the adoption of this resolution; with a further proviso that any cash payments received from taxes of 1933 and prior years be held in a reserve fund and said moneys after being deposited to be separately accounted for in said reserve fund and that any cash payments on account of the principal of any assessments included in said compromise be deposited in the trust accounts to be held therein.

6d. Be it Further Resolved that this approval is conditional upon the Borough Council making payments to the reserve funds within forty-eight hours after the receipt of any of the moneys referred to in the above schedule and upon further condition that the payments referred to represent all of the municipal liens or other charges now due against the properties hereinabove named.

6e. On motion of Commissioner Woolston, seconded by Commissioner Darby the foregoing resolution was adopted by an unanimous vote.

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[fol. 331] Meeting of April 12, 1935

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5. Letter from Joseph Kline, Secretary of the Runnemede People's Club inquiring whether there was some way whereby unemployed taxpayers could work out their back taxes was duly considered and it was the opinion of this Commission that this matter should be taken up with the Emergency Relief Administration through the Camden County Director.

6. The matter of a tax sale in the Borough of Runnemede was discussed and the following resolution was proposed by Mr. Backes and adopted by an unanimous vote:

6a. Resolved that this Commission recommend that the Collector of the Borough of Runnemede hold a tax sale

forthwith after July 1st and that the sale include all delinquent taxes, assessments and other charges subject to sale as at July 1st 1935 and

Co. Be it Further Resolved that the Collector take proper steps to make this an all inclusive sale and have it legal in all particulars.

7. Certified copies of resolutions adopted by the Borough Council under date of April 4th were filed with this Commission and directed to be spread in full in these minutes.

(1) Whereas, certain taxpayers of the Borough of Runnemede as hereinafter designated, tender Bond No. 66 of the Borough of Runnemede, being a Temporary Improvement Bond, dated September 1st, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars ($1,000.00), with interest thereon, as payment upon account of the municipal liens, taxes and assessments levied and assessed respectively on the following:

Harry M. Johnston, Sr., Owner, Block 50, Lot 5.
Curt Taeschner, Owner, Block 137, Lots 22-23.
Curt Taeschner, Owner, Block 140, Lot 3.
Curt Taeschner, Owner, Block 143, Lot 11.
Fire Association of Phila., Owner, Block 45, Lot 12.
Luke Diegman, Owner, Block 69, Lot 6.
Charles E. Watson, Owner, Block 63, Lot 4.
Fred. W. Harvey, Owner, Block 93, Lot 9.
Max Schaefer, Owner, Block 64, Lot 20.
Oscar Joyce, Owner, Block 137, Lot 18.
Albert W. Spencer, Owner, Block 64, Lot 17.
Harry Wimley, Owner, Block 129, Lot 8.

For the purpose of taking credit therefor in the sum of One Thousand Dollars, being the principal of the said bond; and further tender the payment of the balance of said taxes and municipal liens, together with all taxes and municipal liens subsequent to January 1st, 1934, and up to and including the taxes assessed for the year 1934, in full, with interest upon [fol. 332] all delinquent taxes and assessments, in cash:

Now, Therefore, be it Resolved by the Mayor and Borough Council of the Borough of Runnemede, in the County of Camden, New Jersey, that the Tax Collector of the Borough of Runnemede be and he is hereby authorized and di-

rected to accept from the said owners said bond No. 66 of the Temporary Improvement Bonds of the Borough of Runnemede, dated September 1, 1926, due September 1st, 1932 interest rate 5¼ per centum, in the denomination of One Thousand Dollars, with interest due thereon, on account of the principal of taxes and municipal liens and assessments upon premises assessed in the names of the owners hereinabove recited and as hereinabove set forth, which fell due prior to January 1st, 1934, and to give credit therefor, for said bonds and interest, in the amount of the principal of said bond only, to wit, One Thousand Dollars ($1,000.00), provided that the balance of the said municipal liens and taxes, together with taxes and municipal liens subsequent to January 1st, 1934, and the interest upon all delinquent taxes and municipal liens, be paid in full in cash; and, provided further, that said payment shall be made within fifteen days after the written assent of the Municipal Finance Commission to the adoption of this resolution shall have been received; and

Be it Further Resolved that the said Tax Collector, upon receipt of said bond, shall deliver the same to the Borough Treasurer.

Dated April 4th 1935.

Statement of Taxes and Assessments Due on Properties Situate in the Borough of Runnemede, Camden County, New Jersey

Harry M. Johnston, Sr., Owner, Block 50, Lot 5

Balance 1933 Taxes	$90.45
1934 Taxes	102.61
1st Quarter 1935 Taxes	25.65
Balance Sidewalk	55.25
Interest	15.00
Total	$288.96

Curt Taeschner, Block 137, Lots 22-23, Owner, Block 140, Lot 3, Block 143, Lot 11

Balance Sidewalk	183.90
Interest	3.68
Total	187.58

(Taxes including first half 1935 paid.)

Fire Association of Philadelphia, Owner, Block 45, Lot 12

Balance Sidewalk	32.77
Interest	1.98
Total	34.75

(Taxes including first half 1935 paid.)

Luke Diegman, Owner, Block 69, Lot 6

Balance Sidewalk	45.10
Interest	2.70
Total	47.80

(Taxes including first half 1935 paid.)

[fol. 333] Charles E. Watson, Owner, Block 63, Lot 4

Balance Sidewalk	$40.96
Interest	2.46
Total	43.42

(Taxes including first half 1935 paid.)

Fred W. Harvey, Owner, Block 93, Lot 9

Balance Sidewalk	20.80
Interest	1.26
Total	22.06

(Taxes including first half 1935 paid.)

Max Schaefer, Owner, Block 64, Lot 20

Balance Sidewalk	41.60
Interest	2.52
Total	44.12

(Taxes including first half 1935 paid.)

Oscar Joyce, Owner, Block 137, Lots 6 & 18

Balance Sidewalk	41.09
Interest	.82
Total	41.91

(Taxes including first quarter 1935 paid.)

Albert W. Spencer, Owner, Block 64, Lot 17

Balance Sidewalk	8
Interest	
Total	8

(Taxes including first half 1935 paid.)

Harry Wimley, Owner, Block 129, Lot 8

Balance Sidewalk	199
1931 Taxes	31
1932 Taxes	78
1933 Taxes	82
1934 Taxes	79
1st Quarter 1935 Taxes	19
Interest	33
Total	523

Summary—Total Amounts Due

Harry M. Johnston, Sr., Block 50, Lot 5	$288.9
Curt Taeschner, Block 137, Lots 22-23 Curt Taeschner, Block 140, Lot 3 Curt Taeschner, Block 143, Lot 11	187
Fire Association of Phila., Block 45, Lot 12	34
Luke Diegman, Block 69, Lot 6	47
Charles E. Watson, Block 63, Lot 4	43
Fred W. Harvey, Block 93, Lot 9	22
Max Schaefer, Block 64, Lot 20	44
Oscar Joyce, Block 137, Lot 18	41
Albert W. Spencer, Block 64, Lot 17	88
Harry Wimley, Block 129, Lot 8	523
Total	$1,322

[fol. 334] Amounts Due Prior to January 1st, 1934

Harry M. Johnston, Sr., Block 50, Lot 5	$145
Curt Taeschner, Block 137, Lot 22-23 Curt Taeschner, Block 140, Lot 3 Curt Taeschner, Block 143, Lot 11	183
Fire Association of Phila., Block 45, Lot 12	32
Luke Diegman, Block 69, Lot 6	45

Charles E. Watson, Block 63, Lot 4	40.96
Fred W. Harvey, Block 93, Lot 9	20.80
Max Schaefer, Block 64, Lot 20	41.60
Oscar Joyce, Block 137, Lot 18	41.09
Albert W. Spencer, Block 64, Lot 17	83.20
Harry Wimley, Block 129, Lot 8	390.73
Total	$1,025.85
Total amount as per summary above	1,322.35
Payment of the Borough of Runnemede temporary improvement #66 dated September 1, 1926, due September 1, 1932, rate 5¼%, denomination of $1000.00	1,000.00
Balance to be paid in cash on or before April 15, 1935	$322.35

(2) Whereas, certain taxpayers of the Borough of Runnemede, as hereinafter designated, tender bond No. 61 of the Borough of Runnemede; being a temporary improvement bond, dated September 1st, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of one thousand dollars ($1,000.00), with interest thereon, as payment upon account of the municipal liens, taxes and assessments levied and assessed respectively on the following:

Mary Cochran, Owner, Block 49, Lot 13.
Mary Cochran, Owner, Block 105, Lot 6.
Horace F. Nixon, Owner, Block 121, Lot 7.
Nellie Milligan, Owner, Block 93, Lot 11.
Arthur Partridge, Owner, Block 108, Lot 21.
George C. Harvey, Owner, Block 93, Lot 8.
James De Rano, Owner, Block 60, Lots 4 & 23.
Frank Lodge, Owner, Block 119, Lot 7.
Frank T. Lodge, Owner, Block 95, Lot 3.
John B. Johnson, Owner, Block 112, Lot 1.
Louise F. Whealton, Owner, Block 58, Lot 16.

for the purpose of taking credit therefor in the sum of One Thousand Dollars, being the principal of the said bond; and further tender the payment of the balance of said taxes and municipal liens, together with all taxes and municipal liens subsequent to January 1st, 1934, and up to and includ-

ing the taxes assessed for the year 1934, in full, with interest upon all delinquent taxes and assessments, in cash.

Now, therefore, be it resolved by the Mayor and Borough Council of the Borough of Runnemede, in the County of Camden, New Jersey, that the Tax Collector of the Borough of Runnemede be and he is hereby authorized and directed to accept from the said owners said bond No. 61 of the Temporary Improvement Bonds of the Borough of Runnemede, dated September 1, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars, with interest due thereon, on account of the prin-
[fol. 335] cipal of taxes and municipal liens and assessments upon premises assessed in the names of the owners hereinabove recited and as hereinabove set forth, which fell due prior to January 1st, 1934, and to give credit therefor, for said bonds and interest, in the amount of the principal of said bond only, to wit, One Thousand Dollars ($1,000.00), provided that the balance of the said municipal liens and taxes, together with taxes and municipal liens subsequent to January 1st, 1934, and the interest upon all delinquent taxes and municipal liens, be paid in full in cash; and provided further, that said payment shall be made within fifteen days after the written assent of the Municipal Finance Commission to the adoption of this resolution shall have been received: and

Be it further resolved that the said Tax Collector, upon receipt of said bond, shall deliver the same to the Borough Treasurer.

Dated: April 4th, 1935.

Statement of Taxes and Assessments Due on Properties Situate in the Borough of Runnemede, Camden County, New Jersey.

Mary Cochran, Owner, Block 49, Lot 13

Balance Sidewalk	$35.98
1st Quarter & 2nd 1935 Taxes	6.50
Interest	.72
Total	43.20

(Taxes prior years paid.)

Mary Cochran, Owner, Block 105, Lot 6

Balance Sidewalk	22.10
1st & 2nd Quarter 1935 Taxes	12.86
Interest	1.32
Total	36.28

(Taxes prior years paid.)

Horace F. Nixon, Owner, Block 121, Lot 7

Balance Sidewalk	54.51
1st Quarter 1935 Taxes	21.47
Interest	7.15
Total	83.13

(Taxes prior years paid.)

Nellie Milligan, Owner, Block 93, Lot 11

Balance Sidewalk	20.80
Interest	1.26
Total	22.06

(Taxes including 1st quarter 1935 paid.)

Arthur Partridge, Owner, Block 108, Lot 21

Balance Sidewalk	46.32
Interest	2.30
Total	48.62

(Taxes including 1st quarter 1935 paid.)

[Vol. 336] George C. Harvey, Owner, Block 93, Lot 8

Balance Sidewalk	$20.80
Interest	1.05
Total	21.85

(Taxes including 1st quarter 1935 paid)

James De Rano, Owner, Block 60, Lots 4 & 23

Balance Sidewalk	145.6
Interest	7.3
Total	152.9

(Taxes including 1st quarter 1935 paid.)

Frank Lodge, Owner, Block 119, Lot 7

Balance Sidewalk	132.60
1931 Taxes	96.60
1932 Taxes	99.28
1933 Taxes	103.48
1934 Taxes	47.44
1935 Taxes (1st Quarter)	25.04
Interest	108.76
Total	613.20

Frank T. Lodge, Owner, Block 95, Lot 3

Balance Sidewalk	20.80
1st Quarter 1935 Taxes	2.57
Interest	1.29
Total	24.66

(Taxes prior years paid)

John B. Johnson, Owner, Block 112, Lot 1

Balance Sidewalk	171.51
1st Quarter 1935 Taxes	31.16
Interest	19.20
Total	221.87

(Taxes prior years paid.)

Louise F. Whealton, Owner, Block 58, Lot 16

Balance Sidewalk	$54.62
Interest	7.12
Total	61.74

(Taxes including 1st quarter 1935 paid.)

Summary—Total Amounts Due

Mary Cochran, Block 49, Lot 13	$43.20
Mary Cochran, Block 105, Lot 6	36.28
Horace F. Nixon, Block 121, Lot 7	83.13
Nellie Milligan, Block 93, Lot 11	22.06
Arthur Partridge, Block 108, Lot 21	48.62
George C. Harvey, Block 93, lot 8	21.85
James De Rano, Block 60, Lot 4 & 23	152.90
Frank Lodge, Block 119, Lot 7	613.20
Frank T. Lodge, Block 95, Lot 3	24.66
John B. Johnson, Block 112, Lot 1	221.87
Louise F. Whealton, Block 58, Lot 16	61.74
	1,329.51

[fols. 337-339] Amounts Due Prior to January 1st, 1934

Mary Cochran, Block 49, Lot 13	$35.98
Mary Cochran, Block 105, Lot 6	22.10
Horace F. Nixon, Block 121, Lot 7	54.51
Nellie Milligan, Block 93, Lot 11	20.80
Arthur Partridge, Block 108, Lot 21	46.32
George C. Harvey, Block 93, Lot 8	20.80
James De Rano, Block 60, Lots 4 & 23	145.60
Frank Lodge, Block 119, Lot 7	431.96
Frank T. Lodge, Block 95, Lot 3	20.80
John B. Johnson, Block 112, Lot 1	171.51
Louise F. Whealton, Block 58, Lot 16	54.62
Total	1,025.00
Total amount as per summary above	1,329.51
Payment of the Borough of Runnemede Temporary Improvement Bond #61, dated September 1st, 1926, due September 1st, 1932, rate 5½% denomination of $1,000	1,000.00
Balance to be paid in cash on or before March 28th, 1935	329.51

a. After a careful study of the items involved in the preceding schedules the following resolution was proposed.

b. Resolved that the Municipal Finance Commission give its formal consent in writing to the resolutions set forth above.

7c. Be it further resolved that such assent and approval is granted with the proviso that the payments received in satisfaction of the several individual items be made within fifteen days from the adoption of this resolution; with a further proviso that any cash payments received from taxes of 1933 and prior years be held in a reserve fund and said moneys after being deposited to be separately accounted for in said reserve fund and that any cash payments on account of the principal of any assessments included in said compromise be deposited in the trust accounts to be held therein.

7d. Be it further resolved that this approval is conditional upon the Borough Council making payments to the reserve funds within forty-eight hours after the receipt of any of the moneys referred to in the above schedule and upon further condition that the payments referred to represent all of the municipal liens or other charges now due against the properties hereinabove named.

7e. On motion of Commissioner Backes, seconded by Commissioner Woolston the foregoing resolution was adopted by an unanimous vote.

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[fol. 340] Meeting of March 22, 1935

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3. There was noted for the record receipt of certified copy of minutes of meeting of Borough Council held on March 8, 1935.

3a. Chairman Darby read a resolution from the above minutes regarding the issuance of a tax revenue note for $5,507.01 for the purpose of meeting requirements of the Board of Education, directing attention to the fact that such action required action on the part of this Commission, therefore, the Secretary was directed to take this matter up with the Borough officials.

4. The Chairman reported that he had advised the Secretary to the Camden County Board of Taxation with respect to the amount of the 1935 budget of the Borough directing the Secretary's attention to the fact that the budget approved by this Commission should be considered as the official budget.

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[fol. 341] Meeting of March 15, 1935

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5. Chairman Darby reported a lengthy conference with Solicitor Varbalow, Mayor May and Collector Spencer at which time, the proposed budget was discussed in detail. The results of this conference were summarized in a letter from the Solicitor dated March 14th which was read by the Chairman and directed to be filed after acknowledgment.

5a. The several items in the budget heretofore filed by the Borough which were at variance with the budget approved by this Commission were reviewed and the Commission by motion duly made seconded and carried directed that the budget agreed upon at the conference hereinabove referred to be spread in full in these minutes, said budget to constitute the official budget of the Borough for the year 1935; and that the State Auditor be directed to issue an order directing that the budget be changed in accordance with the budget approved by this Commission.

Resources:

Anticipated Revenues	1935
Surplus Revenue Appropriated	$3,662.22
Miscellaneous Revenues Anticipated:	
Licenses and Permits	1,900.00
Interest on Delinquent Taxes	4,000.00
Interest on Assessments	2,000.00
Franchise Tax	4,400.00
Gross Receipts Tax	700.00
Tax Searches	150.00
Return of Foreclosure Costs	2,000.00
Refund on Water Mains	168.00
Total Miscellaneous Revenues Anticipated	15,318.00
Amount to be Raised by Taxation	31,185.03
Total Resources	$50,165.25

Appropriations:

General Government:	
Administrative and Executive	1,580.00
Assessment and Collection of Taxes	2,450.00
Department of Finance	90.00
Expenses of Tax Sale and Foreclosures	4,000.00
Municipal Finance Commission and Audit	1,700.00
[fol. 342] Preservation of life and property:	
Police	$3,620.00
Fire	5,160.00
Health and charities:	
Health	223.00
School nurse	334.30
Poor	100.00
Poor-emergency relief	600.00
Streets, highways, sewers:	
Roads	3,340.00
Lighting of streets	4,000.00
Garbage	150.00
Elections:	200.00
Debt service:	
Payment of serial bonds	2,000.00
Payment of emergency notes-bonds	3,700.00
Interest on serial bonds	2,747.50
Interest on assessment bonds	7,980.00
Interest on emergency notes-bonds	1,350.00
3% Apprn. temporary indebtedness	1,076.23
Contingent	100.00
Overexpenditures 1933	740.73
Deficit miscellaneous revenues antic. 1933	163.03
Remitted taxes more than 3 years in arrears	1,083.79
Remitted assessments	771.97
Deficit unexpended balances 1933	902.70
Total appropriations	$50,165.25

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[fol. 343] Meeting of March 1, 1935

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7. Schedule of indebtedness with list of defaults and the holders of bonds was filed and directed to be noted in the records.

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9. Certified copy of a resolution adopted by the borough council under date of February 21st pertaining to certain tax settlements in connection with property of Caroline M. Golden, mortgagee, et als was considered and assent denied until all taxes are brought up to date.

10. Communication from Judge Varbalow bearing date of February 21st with respect to the settlement of taxes by the use of bonds was brought up for consideration and referred to the chairman for answer.

11. Communication from Judge Varbalow bearing date of February 18th accompanied by copy of the budget adopted by the borough for the year 1935 was duly considered. The several changes in the budget adopted by the borough council were carefully considered and the following resolution was adopted by an unanimous vote:

11a. Resolved that the municipal finance commission adhere to the original budget as approved by this commission; and the secretary be instructed to advse the borough to this effect.

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Meeting of February 8, 1935

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[fol. 344] 5. Question was raised as to whether the Borough might accept past due school bonds in the payment of taxes with the understanding that such bonds would be turned over to the Board of Education and applied against the amount of local school taxes owing.

5a. It was regularly moved, seconded and carried that past due school bonds might be accepted in the payment of delinquent taxes with the condition that the Board of Education will accept such bonds at par in satisfaction of local school taxes payable, with the understanding that the Borough secure a preliminary assent in writing from the Board of Education to such procedure.

6. The budget of the Borough for the year 1935 was now taken up and considered in detail after which the following resolution was proposed and adopted by an unanimous vote:

6a. Resolved that the Municipal Finance Commission prove the following budget of the Borough of Runnem for the year 1935 and that said budget be spread in ful these minutes.

Resources:

Anticipated Revenues	1935
Surplus Revenue Appropriated	$3,662.
Miscellaneous Revenues Anticipated:	
Licenses and Permits	750.(
Interest on Delinquent Taxes	3,000.(
Interest on Assessments	2,000.0
Franchise Tax	4,400.0
Gross Receipts Tax	700.0(
Poll Taxes	
Tax Searches	150.00
Return of Foreclosure Costs	1,000.00
Refund on Water Mains	168.00
Total Miscellaneous Revenues Anticipated	$12,168.00
Amount to be Raised by Taxation	32,440.03
Total Resources	$48,270.23

[fol. 345]. Appropriations	1935
General Government:	
Administrative and Executive	$1,580.00
Assessment and Collection of Taxes	2,450.00
Department of Finance	90.00
Expenses of Tax Sale and Foreclosures	2,000.00
Municipal Finance Commission and Audit	1,700.00
Preservation of Life and Property:	
Police	3,620.00
Traffic Control	200.00
Fire	4,540.00
Health and Charities:	
Health	225.00
School Nurse	334.30
Poor	100.00
Poor—Emergency Relief	600.00

Streets, Highways, Sewers:	
Roads	3,340.00
Lighting of Streets	4,000.00
Garbage	150.00
Elections	200.00
Debt Service:	
Payment of Serial Bonds	2,000.00
Payment of Emergency Notes—Bonds	3,700.00
Interest on Serial Bonds	2,747.50
Interest on Assessment Bonds	8,505.00
Interest on Emergency Notes—Bonds	1,350.00
3% Apprn. Temporary Indebtedness	1,076.23
Contingent	100.00
Overexpenditures 1933	740.73
Deficit Miscellaneous Revenues Antic., 1933	163.03
Remitted Taxes More than 3 Years in Arrears	1,083.79
Remitted Assessments	771.97
Deficit Unexpended Balances 1933	902.70
Total Appropriations	$48,270.25

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[fol. 346] Meeting of January 25, 1935

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4. Certified copies of resolutions adopted by the Township Committee under dates of December 27, 1934, January 10, 1935 and January 17, 1935 respectively were carefully considered by the Municipal Finance Commission and are detailed below as A, B and C.

A. Whereas, certain taxpayers of the Borough of Runnemede as hereinafter designated, tender bonds Nos. 52 and 53 of the Borough of Runnemede, being Temporary Improvement Bonds, dated September 1st, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars each, with interest thereon, as payment upon account of the municipal liens, taxes and assessments levied and assessed respectively on the following:

1. Frederick G. Thorn, Owner, Block 108, Lot 12.

2. Grace E. McKenna, Owner, Block 42, Lot 2.

3. Alfred P. Page, Owner, Block 92, Lot 19.

4. Barrington Bldg. & Loan Ass'n, Owner, Block 58. Lot 9.

5. Estate of Thomas Harkins, Owner, Block 113, Lot 4.

6. Atlas Beneficial Loan Ass'n, Owner, Block 35, Lot 2.

For the purpose of taking credit therefor in the sum of Two Thousand Dollars, being the principal of the said bonds; and, further tender the payment of the balance of said taxes and municipal liens, together with all taxes and municipal liens subsequent to January 1st, 1934, and up to and including the taxes assessed for the year 1934, in full, with interest upon all delinquent taxes and assessments, in cash:

Now, Therefore, be it Resolved by the Mayor and Borough Council of the Borough of Runnemede, in the County of Camden, New Jersey, that the Tax Collector of the Borough of Runnemede be and he is hereby authorized and directed to accept from the said owners said Bonds Nos. 52 and 53 [fol. 347] of the Temporary Improvement Bonds of the Borough of Runnemede, dated September 1, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars each, a total of Two Thousand Dollars, with interest due thereon, on account of the principal of taxes and municipal liens and assessments upon premises assessed in the names of the owners hereinabove recited and as hereinabove set forth, which fell due prior to January 1st, 1934, and to give credit therefor, for said bonds and interest, in the amount of the principal of the bonds only, to wit, Two Thousand ($2,000) provided that the balance of the said municipal liens and taxes, together with taxes and municipal liens subsequent to January 1st, 1934, and the interest upon all delinquent taxes and municipal liens, be paid in full in cash, and, provided further, that said payment shall be made within fifteen days after the written assent of the Municipal Finance Commission to the adoption of this resolution shall have been received; and

Be it Further Resolved that the said Tax Collector, upon receipt of said bonds, shall deliver the same to the Borough Treasurer.

Dated December 27, 1934.

Statement of Taxes and Assessments Due on Properties Situate in the Borough of Runnemede, Camden, New Jersey

1. Frederick G. Thorn, Owner, Block 108, Lot 12:

1930 Taxes	$8.54
Unpaid Balance, sidewalk assessment	69.46
Interest and Costs to date of tax sale, 11/5/31	6.72
1931 Taxes	33.46
1932 Taxes	32.76
1933 Taxes	34.44
Amount due prior to Jan. 1, 1934	$185.38
1934 Taxes	33.33
Interest to Date	41.51
Total due	$260.22

2. Grace E. McKenna. Owner, Block 42, Lot 2:

Unpaid Balance, sidewalk assessment	32.76
Amount due prior to Jan. 1, 1934	$32.76
Interest to date	1.49
Total due (all taxes paid)	$34.25

3. Alfred P. Page, Owner, Block 92, Lot 19:

1930 Taxes	$88.54
Unpaid Balance, sidewalk assessment	72.80
Interest and Costs to date of tax sale, 11/5/31	23.49
1932 Taxes	97.11
1933 Taxes	100.80
Amount due prior to Jan. 1, 1934	$382.74
1934 Taxes	97.56
Interest to date	79.91
Total due	$560.21

[fol. 348] 4. Barrington Bldg. & Loan Ass'n, Owner, Block 58, Lot 9:

1928 Taxes, Balance	$49.64
1929 Taxes	90.90
1930 Taxes	88.92
Unpaid Balance, sidewalk assessment	110.63
Interest and costs to date of tax sale, 11/5/31	64.10
1931 Taxes	99.43
1932 Taxes	91.59
1933 Taxes	93.80
Amount due prior to Jan. 1, 1934	$688.91
1934 Taxes	90.79
Interest to date	165.34
Total due	$945.04

5. Estate of Thomas Harkins, Owner, Block 113, Lot 4:

Unpaid Balance, sidewalk assessment	372.16
Interest and costs to date of tax sale, 11/5/31	5.81
Amount due prior to Jan. 1,.1934	$377.97
1934 Taxes (3rd & 4th Quarters only, all other taxes paid)	78.60
Interest to date	114.03
Total Due	$570.60

6. Atlas Beneficial Loan Ass'n, Owner, Block 35, Lot 2:

Unpaid Balance, sidewalk assessment	$120.86
Interest and Costs to date of tax sale, 11/5/31	23.14
1930 Taxes, Balance	15.25
1931 Taxes	88.43
1932 Taxes	86.58
1933 Taxes (paid)	
Amount due prior to Jan. 1, 1934	$334.26
1934 Taxes (3rd and 4th Quarters only, 1st & 2nd Quarters having been paid)	41.92
Interest to date	77.23
Total due	$453.41

S mary

Total Amounts Due

Frederick G. Thorn, Block 108, Lot 12	$260.22
Grace E. McKenna, Block 42, Lot 2	34.25
Alfred P. Page, Block 92, Lot 19	560.21
Barrington Bldg. & Loan Ass'n, Block 58, Lot 9	945.04
Estate of Thomas Harkins, Block 113, Lot 4	570.60
Atlas Beneficial Loan Ass'n, Block 35, Lot 2	453.41
	$2,823.73

Amounts Due Prior to Jan. 1, 1934

Frederick G. Thorn, Block 108, Lot 12	185.38
Grace E. McKenna, Block 42, Lot 2	32.76
Alfred P. Page, Block 92, Lot 19	382.74
Barrington B. & L. Ass'n, Block 58, Lot 9	688.91
Est. of Thomas Harkins, Block 113, Lot 4	377.97
Atlas Beneficial Loan An., Block 35, Lot 2	334.26
	$2,002.02

[fol. 349] Method of Payment

Total amount due, as per summary above	$2,823.73
Payment by Borough of Runnemede Temporary Improvement Bonds Nos. 52 and 53, dated 9/1/26, due 9/1/32, rate 5¼%, denomination $1,000 each (Taxes and assessments due prior to 1/1/34 being $2,002.02, as above	2,000.00
Balance to be paid in cash on or before Jan. —, 1935	$823.73

B. Whereas, certain taxpayers of the Borough of Runnemede, as hereinafter designated, tender Bond No. 51 of the Borough of Runnemede, being a Temporary Improvement Bond, dated September 1st, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars ($1,000.00), with interest thereon, as payment upon account of the municipal liens, taxes and assessments levied and assessed respectively on the following:

Hedding Building and Loan Association, Owner, Block 94, Lot 10.

Amelia & Rebecca Jennings, Owners, Block 61, Lot 8.

Camden Optional Building and Loan Association, Owner, Block 9, Lot 5.

for the purpose of taking credit therefor in the sum of One Thousand Dollars, being the principal of the said bond; and further tender the payment of the balance of said taxes and municipal liens, together with all taxes and municipal liens subsequent to January 1st, 1934, and up to and including the taxes assessed for the year 1934, in full, with interest upon all delinquent taxes and assessments, in cash:

Now, Therefore, be it Resolved by the Mayor and Borough Council of the Borough of Runnemede, in the County of Camden, New Jersey, that the Tax Collector of the Borough of Runnemede be and he is hereby authorized and directed to accept from the said owners said Bond No. 51 of the Temporary Improvement Bonds of the Borough of Runnemede, dated September 1, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars, with interest due thereon, on account of the principal of taxes and municipal liens and assessments upon premises assessed in the names of the owners hereinabove recited and as hereinabove set forth, which fell due prior to January 1st, 1934, and to give credit therefor, for said bonds and interest, in the amount of the principal of said bond only, to wit, One Thousand Dollars ($1,000.00), provided that the balance of the said municipal liens and taxes, together with taxes and municipal liens subsequent to January 1st, 1934, and the interest upon all delinquent taxes and municipal liens, be paid in full in cash; and, provided further, that said payment shall be made within fifteen days after the written assent of the Municipal Finance Commission to the adoption of this resolution shall have been received; and

Be it Further Resolved that the said Tax Collector, upon receipt of said bond, shall deliver the same to the Borough Treasurer.

Dated January 10, 1935.

[fol. 350] Statement of Taxes and Assessments Due on Properties Situate in the Borough of Runnemede, Camden County, New Jersey

Haddington Building and Loan Association, Owner, Block 94, Lot 10

Balance—Sidewalk Assessment Amount due prior to Jan. 1, 1934	$145.60
1930 Taxes	84.27
Interest and cost to date of sale 11/5/31	34.97
1931 Taxes	90.82
1932 Taxes	86.58
1933 Taxes	96.60
1934 Taxes	93.50
Interest	121.80
Total	$754.14

Amelia & Rebecca Jennings, Owners, Block 61, Lot 8

Balance—Sidewalk assessment amount Due prior to Jan. 1, 1934	$68.28
1933 Taxes	61.60
1934 Taxes	93.50
Interest	19.64
Total	$243.02

Camden Optional Building and Loan Association, Owner, Block 9, Lot 5

Balance—Sidewalk Assessment Amount Due Prior to Jan. 1, 1934	78.86
1931 Taxes	103.77
1932 Taxes	101.62
1933 Taxes	99.00
1934 Taxes	95.85
Interest	78.82
Total	$557.92

Summary—Total Amounts Due

Heddington Building and Loan Association, Block 94, Lot 10	$754.14
Amelia & Rebecca Jennings, Block 61, Lot 8	243.02
Camden Optional Building and Loan Association, Block 9, Lot 5	557.92
Total to be paid	$1,555.08

[fol. 351] Amounts Due Prior to Jan. 1, 1934

Heddington Building and Loan Association, Block 94, Lot 10	$538.84
Amelia & Rebecca Jennings, Block 61, Lot 8	129.88
Camden Optional Building and Loan, Association, Block 9, Lot 5	383.25
Total	$1,051.97

Method of Payment

Total amount as per Summary above	1,555.08
Payment of Borough of Runnemede, Temporary Improvement Bond #51, dated 9/1/26, due 9/1/32, Rate 5¼% Denomination $1,000. (Taxes and Assessments due prior to 1/1/34 being $1,051.97 as above)	1,000.00
Balance to be paid in cash on or before January 15th, 1935	$555.08

C. Whereas, certain taxpayers of the Borough of Runnemede, as hereinafter designated, tender Bond No. 55 of the Borough of Runnemede, being a Temporary Improvement bond, dated September 1st, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars ($1,000.00), with interest thereon, as payment upon account of the municipal liens, taxes and assessments levied and assessed respectively on the following:

Kazimier-Pulaski Building and Loan Association, Owner, Block 137, Lot 1.
Hedding Building and Loan Association, Owner, Block 141, Lot 10.
Moorestown Stores, Inc., Owner, Block 46, Lot 10.
Amelia B. Jennings, Owner, Block 63, Lot 6.
Big Timber Building and Loan Association, Owner, Block 9, Lot 18.

For the purpose of taking credit therefor in the sum of One Thousand Dollars, being the principal of the said Bond; and further tender the payment of the balance of said taxes and municipal liens, together with all taxes and municipal liens subsequent to January 1st, 1934, and up to and including the taxes assessed for the year 1934, in full, with interest upon all delinquent taxes and assessments, in cash:

[fol. 352] Now, therefore, be it Resolved by the Mayor and Borough Council of the Borough of Runnemede, in the County of Camden, New Jersey, that the Tax Collector of the Borough of Runnemede be and he is hereby authorized and directed to accept from the said owners said bond No. 55 of the Temporary Improvement Bonds of the Borough of Runnemede, dated September 1, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars, with interest due thereon, on account of the principal of taxes and municipal liens and assessments upon premises assessed in the names of the owners hereinabove recited and as hereinabove set forth, which fell due prior to January 1st, 1934, and to give credit therefor, for said bonds and interest, in the amount of the principal of said bond only, to wit, One Thousand Dollars ($1,000.00), provided that the balance of the said municipal liens and taxes, together with taxes and municipal liens subsequent to January 1st, 1934, and the interest upon all delinquent taxes and municipal liens, be paid in full in cash; and, provided further, that said payment shall be made within fifteen days after the written assent of the Municipal Finance Commission to the adoption of this resolution shall have been received; and

Be it Further Resolved that the said Tax Collector, upon receipt of said bond, shall deliver the same to the Borough Treasurer.

Dated January 17, 1935.

Statement of Taxes and Assessments Due on Properties Situate in the Borough of Runnemede, Camden County, New Jersey

Lazimier-Pulaski Building and Loan Association, Owner,
Block 137, Lot 1

1932 Taxes	$77.99
1933 Taxes	80.64
1934 Taxes	75.34
Interest	27.25
Total	$261.22

Hedding Building and Loan Association, Owner, Block 141 Lot 10

1929-1930 Taxes	155.5
Interest and cost to date of sale	24.3
1931 Taxes	86.0
1932 Taxes	74.8
1933 Taxes	77.0
1934 Taxes	74.5
Interest	93.8
Total	$586.1

Moorestown Stores, Inc. (Owner) Block 46, Lot 10

Second Half 1933 Taxes	73.2
1934 Taxes	41.7
Interest	12.5
Total	$227.4

[fol. 353] Amelia B. Jennings (Owner), Block 63, Lot 6

Balance of 1933 Taxes	$67.4
Balance Sidewalk	63.5
1934 Taxes	89.4
Interest	23.9
Total	$244.2

Big Timber Building and Loan Association, Owner. Block 9, Lot 18

Balance Sidewalk	66.9
1932 Taxes	106.3
1933 Taxes	110.2
1934 Taxes	106.6
1st Quarter 1935 Taxes	26.6
Interest	48.4
Total	$465.2

Summary—Total Amounts Due

Kazimier-Pulaski Building and Loan Association, Block 137, Lot 1	$261.2
Hedding Building and Loan Association, Block 141, Lot 10	586.1

Moorestown Stores, Inc., Block 45, Lot 10	227.49
Amelia B. Jennings, Block 63, Lot 6	244.23
Big Timber Building and Loan Association, Block 9, Lot 18	465.24
Total to be paid	$1,784.35

Amounts Due Prior to January 1, 1934

Kazimier-Pulaski Building and Loan Association, Block 137, Lot 1	158.63
Hedding Building and Loan Association, Block 141, Lot 10	417.78
Moorestown Stores, Inc., Block 46, Lot 10	73.22
Amelia B. Jennings, Block 63, Lot 6	130.90
Big Timber Building and Loan Association, Block 9, Lot 18	283.46
Total	$1,063.99

[fol. 354] Total amount as per summary above	$1,784.35
Payment of Borough of Runnemede Temporary Improvement Bond #55, Dated September 1, 1926, Due September 1, 1932, Rate 5¼%, Denomination $1,000, (Taxes and Assessments Due Prior to January 1st, 1934, Being $1,063.99)	1,000.00
Balance to be paid in cash on or before January 31st, 1935	$784.35

4a. After a careful study of the items involved in the preceding schedules the following resolution was proposed:

4b. Resolved that the Municipal Finance Commission give its formal consent in writing to the resolutions set forth above;

4c. Be it further resolved that such assent and approval is granted with the proviso that the cash payments received in satisfaction of the items set forth above be made within fifteen days from the date of this meeting with the proviso that the cash derived from taxes of 1933 and prior years be held in a reserve fund and said taxes after being deposited to be separately accounted for in said reserve fund.

4d. Be it further resolved that this approval is conditional upon the Borough Council making payments to the reserve funds within forty-eight hours after the receipt of any of the moneys referred to in the above schedule and upon further condition that the payments referred to represent all of the municipal liens or other charges now due against the property hereinabove named.

4e. On motion of Commissioner Darby, seconded by Commissioner Woolston the foregoing resolution was adopted by an unanimous vote.

5. Letter from Borough Clerk Gaunt with respect to property standing in the name of the Atlas Beneficial Loan Association which matter was recently referred to Auditor Gary was considered along with Mr. Gary's report thereon. It was the opinion of this Commission that no objections would be raised if the Borough Council assented to the suggestions of Mr. Gary, namely that the Building and Loan Association be allowed a reasonable time to make repairs, etc.

6. At the conclusion of the regular meeting, Judge Varbalow, Borough Solicitor; Collector Spencer and Dr. Fessman appeared before the Commission with respect to the 1935 Borough budget.

6a. Commissioners Darby, Martin and Backes were present together with Messrs. Gary and Woolston.

6b. There was a lengthy discussion of the proposed budget with the result that the Commission took a short adjournment and organized an executive session. Following the executive session, the Runnemede delegation was recalled and the budget was discussed in further detail.

6c. The matter of using surplus revenue was considered at some length and it was pointed out that there was no possibility of the Borough realizing upon any surplus for the purpose of reducing local purpose taxes. It was also shown that the use of surplus beyond the actual amount of deferred charges which in this case are items which do not require an immediate cash outlay was impractical and dangerous. It would simply mean that the Borough would finish the year 1935 in a less favorable financial position than at the present time.

[fols. 355-356] 6d. After further discussion, a budget calling for the use of surplus revenue in the amount of $3,662.22; miscellaneous revenues anticipated $12,168.00 and local purpose taxes of $32,440.03 was tentatively approved such anticipations being offset by total appropriations of $48,270.25.

* * * * * * *

[fol. 357] Meeting of January 11, 1935

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6. Certified copy of a resolution adopted under date of December 13th as more particularly detailed below was considered:

Whereas, certain taxpayers of the Borough of Runnemede as hereinafter designated, tender Bonds Nos. 5, 46 and 47 of the Borough of Runnemede, being Temporary Improvement Bonds, dated September 1st, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars each, with interest thereon, as payment upon account of the municipal liens, taxes and assessments levied and assessed respectively on the following:

1. Hunter and Gallagani, Owners,
   (a) Block 98, Lot 9,
   (b) Block 52, Lot 15,
   (c) Block 52, Lots 7 & 8,
   (d) Block 98, Lot 2.
2. Bernard Steeg, Owner, Block 91, Lot 8.
3. William Wittmer, Inc., Owner, Block 52, Lot 1.
4. Anna F. Elwell, Owner, Block 76, Lot 7-A.
5. Anna Sloan, Owner, Block 48, Lot 1.

For the purpose of taking credit therefor in the sum of Three Thousand Dollars, being the principal of the said bonds; and, further tender the payment of the balance of said taxes and municipal liens, together with all taxes and [fol. 358] municipal liens subsequent to January 1st, 1934, and up to and including the taxes assessed for the year 1934, in full, with interest upon all delinquent taxes and assessments, in cash:

Now, Therefore, be it Resolved by the Mayor and Borough Council of the Borough of Runnemede, in the County of Camden, New Jersey, that the Tax Collector of the Borough of Runnemede be and he is hereby authorized and directed to accept from the said owners said bonds Nos. 5, 46 and 4 of the Temporary Improvement Bonds of the Borough of Runnemede, dated September 1, 1926, due September 1st 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars each, a total of Three Thousand Dollars, with interest due thereon, on account of the principal of taxes and municipal liens and assessments upon premises assessed in the names of the owners hereinabove recited and as hereinabove set forth, which fell due prior to January 1st, 1934, and to give credit therefor, for said bonds and interest, in the amount of the principal of the bonds only, to wit, Three Thousand Dollars ($3,000.) provided that the balance of the said municipal liens and taxes together with taxes and municipal liens subsequent to January 1st, 1934, and the interest upon all delinquent taxes and municipal liens, be paid in full in cash; and, provided further, that said payment shall be made within fifteen days after the written assent of the Municipal Finance Commission to the adoption of this resolution shall have been received; and

Be it Further Resolved that the said Tax Collector, upon receipt of said bonds, shall deliver the same to the Borough Treasurer.

Dated December 13, 1934.

Statement of Taxes and Assessments Due on Properties Situated in the Borough of Runnemede, Camden County New Jersey

1. Hunter and Gallagani, Owners:

(a) Block 98, Lot 9:

Balance—Sidewalk Assessment amount due prior to Jan. 1, 1934	$221.4
1934 Taxes	33.4
Interest	34.9
Total	$289.8

(b) Block 52, Lot 15:

Balance—Sidewalk Assessment amount due prior to Jan. 1, 1934	$172.35
1934 Taxes	55.55
Interest	27.97
Total	$255.87

(c) Block 52, Lots 7 & 8:

1933 Taxes, amount due prior to Jan. 1, 1934	1,027.60
1934 Taxes	1,009.12
Interest	139.51
Total	2,176.23

[fol. 359] (d) Block 98, Lot 2:

Balance—Sidewalk assessment, amount due prior to Jan. 1, 1934	$124.80
1934 Taxes	38.48
Interest	20.21
	$183.49

2. Bernard Steeg, Owner, Block 91, Lot 8:

Balance, sidewalk assessment	$135.20
1933 Taxes	163.40
Amount due prior to Jan. 1, 1934	298.60
Interest	59.33
1934 Taxes	Paid
	$357.93

3. William Wittmer, Inc., Owner, Block 52, Lot 1:

1932 Taxes, 2nd Half	$158.00
1933 Taxes	225.00
Amount due prior to Jan. 1, 1934	$383.00
1934 Taxes	217.80
Interest	41.50
	$642.30

4. Anna F. Elwell, Owner, Block 76, Lot 7-A:

1932 Taxes, Balance	$11.98
Balance, sidewalk assessment	143.43
Amount due prior to Jan. 1, 1934	$155.41
1934 Taxes, 2nd half	48.47
(1st and 2nd quarters paid)	
Interest	8.04
	$211.92

5. Anna Sloan, Owner, Block 48, Lot 1:

Balance, sidewalk assessment	$423.84
Interest and costs to date of tax sale, 11/5/31	80.32
1931 Taxes	64.53
1932 "	63.18
1933 "	70.00
Amount due prior to Jan. 1, 1934	$701.87
1934 Taxes	67.75
Interest	162.73
	$932.35

Summary—Total Amounts Due

Hunter & Gallagani, Block 98, Lot 9	$289.87
" " " 52, " 15	255.87
" " " 52, " 7 & 8	2,176.23
" " " 98, " 2	183.49
	$2,905.46
Bernard Steeg, Block 91, Lot 8	357.93
William Wittmer, Inc., Block 52, Lot 1	642.30
Anna F. Elwell, Block 76, Lot 7-A	211.92
Anna Sloan, Block 48, Lot 1	932.35
Total to be paid	$5,049.96

[fol. 360] Amounts due prior to Jan. 1, 1934:

Hunter & Gallagani, Block 98, Lot 9	$221.45
" " " 52, " 15	172.35
" " " 52, " 7 & 8	1,027.60
" " " 98, " 2	124.80
	$1,546.20
Bernard Steeg, Block 91, Lot 8	298.60
William Wittmer, Inc., Block 52, Lot 1	383.00
Anna F. Elwell, Block 76, Lot 7-A	155.41
Anna Sloan, Block 48, Lot 1	701.87
	$3,085.08

Method of Payment

Total amount, as per Summary above	$5,049.96
Payment by Borough of Runnemede, Temporary Improvement Bonds, #5, #46, and #47, dated 9/1/26, due 9/1/32, rate 5¼%, Denomination $1,000 each, (Taxes and assessments due prior to 1/1/34 being $3,085.08, as above)	$3,000.00
Balance to be paid in cash on or before December 27th, 1934	$2,049.96

6a. After a careful study of the items involved in the preceding schedules the following resolution was proposed:

6b. Resolved that the Municipal Finance Commission give its formal consent in writing to the resolution set forth above;

6c. Be it Further Resolved that such assent and approval is granted with the proviso that the cash payments received in satisfaction of the items set forth above be made within fifteen days from the date of this meeting with the proviso that the cash derived from taxes of 1933 and prior years be held in a reserve fund and said taxes after being deposited to be separately accounted for in said reserve fund.

6d. Be it Further Resolved that this approval is conditional upon the Borough Council making payments to the reserve funds within forty-eight hours after the receipt of any of the moneys referred to in the above schedule and

upon further condition that the payments referred to rep resent all of the municipal liens or other charges now du against the property hereinabove named.

6e. On motion of Commissioner Darby, seconded by Com missioner Woolston the foregoing resolution was adopte by an unanimous vote.

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[fol. 361] Meeting of December 21, 1934

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5. Chairman Darby reported a visit of Borough Attorne Rothermel and Councilman Boyd with respect to the pro posed leasing of the Runnemede Theatre. He reporte also that Mr. Falcey acting for the Theatre people als conferred with them later. He advised that the Borough had executed a lease in favor of the parties desiring to ren the theatre and that this lease was filed with him as Chair man of the Municipal Finance Commission to be held in escrow until executed by the party of the second part and until they produce a bill of sale for the equipment which is to be installed by the party of the second part. As a part of the lease was annexed a schedule of the repairs required by the lessee and in addition a schedule of the properties of the Borough in the Theatre. The lease ap peared to be generally satisfactory to the Commission in that it met the several objections which had been raised to section five of the resolution adopted by the Borough Council.

6. Chairman Darby reported the receipt of a telephone message from Mr. Rothermel this morning to the effect that at a meeting held last night or early this morning the Bor ough passed a resolution to the effect "that all negotiations with respect to the threatre were off". He further stated that Mr. Rothermel was endeavoring to contact the Bor ough Clerk and have him notify all parties that unless this matter was closed up in, say, five or seven days the nego tiations would be discontinued insofar as Mr. Falcey and his principals were concerned.

. . . . . .

[fols. 362-363] Meeting of December 14, 1934

. . . . . .

3. The following bill was approved and directed to be certified to the Borough Council for payment:

For Services rendered by the Municipal Finance Commission covering the months of June to November inclusive said bill being rendered in accordance with the plan approved by the Municipal Finance Commission at its meeting of July 13, 1934, 6 months @ $100.00	$600.00

. . . . . .

9. Chairman Darby reported a communication from the incoming Mayor of the Borough in which he discussed various matters pertaining to administration, etc. The Chairman reported that he had answered this communication in detail and had pointed out the reason for many of the actions to which exceptions were taken by the incoming Mayor.

10. Some discussion followed with respect to the proposed lease on the moving picture theatre and it was reported that this matter seemed to be at a stand-still at the present time. Chairman Darby called attention to a communication which he had addressed to Borough Attorney Rothermel noting the objection on the part of this Commission to section five of the resolution adopted by Borough Council under date of November 22nd last.

. . . . . .

[fol. 364] Meeting of November 16, 1934

. . . . . .

4. Certified copy of a resolution adopted under date of November 7th as more particularly detailed below was considered:

Whereas, First Mortgage Service Co., taxpayer of the Borough of Runnemede, tender bonds Nos. 1 and 2, of the Borough of Runnemede, being Temporary Improvement Bonds, dated November 1, 1926, due November 1, 1932, in-

terest rate 5½ per centum, in the denomination of On Thousand Dollars, with interest thereon due Novembe 1931, May 1932 and November 1932, evidenced by interes coupons attached to said bonds, as payment upon accoun of the municipal liens, taxes and assessments levied an assessed respectively as follows:

First Mortgage Service Co., municipal liens, taxes, and assessments against:

Block 61, Lot 16	Block 40, Lot 7
" 42, " 11	" 40, " 9
" 45, " 9	" 39, " 10
" 41, " 10	" 55, " 7
" 42, " 8	" 58, " 1
" 42, " 6	" 38, " 1b
" 38, " 1a	" 113, " 10
" 48, " 6	

For the purpose of taking credit therefor in the sum of Two Thousand Dollars, being the principal of the said bonds; and, further tender the payment of the balance of said taxes and municipal liens, together with all taxes and municipal liens subsequent to January 1st, 1934, and up to and including the taxes assessed for the year 1934, in full, with interest upon all delinquent taxes and assessments, in cash:

Now, Therefore, be it Resolved by the Mayor and Borough Council of the Borough of Runnemede, in the County of Camden, New Jersey, that the Tax Collector of the Borough of Runnemede be and he is hereby authorized and directed to accept from the said First Mortgage Service Co. said Bonds Nos. 1 and 2 of the Temporary Improvement Bonds of the Borough of Runnemede, dated November 1, 1926, due November 1, 1932, interest rate 5½ per centum, in the denomination of One Thousand Dollars each, a total of Two Thousand Dollars, to which bonds are attached interest coupons for November, 1931, May, 1932, and November 1932, on account of the principal of taxes [fol. 365] and municipal liens and assessments upon premises assessed in the name of First Mortgage Service Co., as hereinabove set forth, which fell due prior to January 1st, 1934, and to give credit therefor, for said bonds and interest, in the amount of the principal of the bonds only.

to wit, Two Thousand Dollars ($2,000.00), provided that the balance of the said municipal liens and taxes, together with taxes and municipal liens subsequent to January 1st, 1934, and the interest upon all delinquent taxes and municipal liens, be paid in full in cash; and, provided further, that said payment shall be made within fifteen days after the written assent of the Municipal Finance Commission to the adoption of this resolution shall have been received; and

Be it Further Resolved that the said Tax Collector, upon receipt of said bonds, shall deliver the same to the Borough Treasurer.

Statement of Taxes and Assessments Due on Properties of First Mortgage Service Co., in the Borough of Runnemede, Camden County, New Jersey

Description	1933 Taxes	Unpaid Bal. Sidewalk Assessment	1934 Taxes
Block 61, Lot 16	93.80	54.62	
" 40, " 7	115.08	43.69	
" 42, " 11	93.40	43.68	
" 40, " 9	112.28	43.68	
" 45, " 9	126.00	49.71	
" 39, " 10	115.08	38.24	
" 41, " 10	113.12	40.63	
" 55, " 7	93.80	54.62	
" 42, " 8	113.12	43.68	
" 58, " 1	110.88	191.20	
" 42, " 6	113.12	43.68	
" 38, " 1b		43.60	
" 38, " 1a		43.60	29.12
" 113, " 10		45.41	
" 48, " 6		33.20	
Totals	$1,199.68	813.24	29.12

Recapitulation

Total 1933 Taxes due as above	$1,199.68
" Unpaid sidewalk assessments	813.24
Amount due prior to Jan. 1, 1934	2,012.92
1934 Taxes on Block 38, Lot 1a	29.12
Interest on 1933 Taxes	114.49
" " Sidewalk assessments	78.89
Total amount due	$2,235.42

[fols. 366-368] The principal sum of taxes and assessments due prior to January 1st, 1934, is	$1,199.6
Representing 1933 Taxes, itemized above	
Unpaid balance on sidewalk assessments, itemized above	813.2
Total	$2,012.9
Amount to be paid by use of bonds	2,000.0
Total Amount Due and Method of Payment	
1933 Taxes	$1,199.6
Unpaid balance, sidewalk assessments	813.2
Interest on Taxes	114.4
" " Assessments	79.8
1934 Taxes, 4th Quarter on Block 38, Lot 1a	29.1
Total due	2,235.4
Payment by Borough of Runnemede, Temporary Improvement Bonds, Nos. 1 and 2, in denomination of $1,000 each, being part of an issue of $47,000, dated 11/1/26, due 11/1/32, rate 5½%, having Nov. 1931, May, 1932, and Nov. 1932, coupons attached	2,000.0
Balance to be paid in cash, on or before 11/15/34	$235.4

5. After a careful study of the items involved in the pre ceding schedules the following resolution was proposed:

6. Resolved that the Municipal Finance Commission giv its formal consent in writing to the resolution set fort above:

7. Be it Further Resolved that such assent and approva is granted with the proviso that the cash payments receive in satisfaction of the items set forth above be made withi fifteen days from the date of this meeting with the provis that the cash derived from taxes of 1933 and prior year be held in a reserve fund and said taxes after being de posited to be separately accounted for in said reserve fun

8. Be it Further Resolved that this approval is cond tional upon the Borough Council making payments to th

reserve funds within forty-eight hours after the receipt of any of the moneys referred to in the above schedule and upon further condition that the payments referred to represent all of the municipal liens or other charges now due against the property hereinabove named (and is further conditioned upon the fact that all 1934 taxes except those specified in the attached schedule have heretofore been paid).

9. On motion of Commissioner Backes, seconded by Commissioner Woolston the foregoing resolution was adopted by an unanimous vote.

[fol. 369] Meeting of October 26, 1934

* * * * * * *

3. Certified copy of a resolution adopted under date of October 24 as more particularly detailed below was considered:

Whereas, Camden Optional Building and Loan Association, and Harriett Haden, taxpayers of the Borough of Runnemede, tender bond No. 4, of the Borough of Runnemede, being temporary improvement bond, dated September 1st, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars, with interest thereon due September 1st, 1932, as payment upon account of the municipal liens, taxes and assessments levied and assessed respectively as follows:

Camden Optional Building and Loan Association: Municipal Liens, taxes and assessments against Lot No. 1, Block 16, Oakland Avenue, and Lot No. 16, Block 51, Second Avenue.

Harriet Haden, Municipal Liens, taxes and assessments against Lot No. 3, Block 63, S. E. cor. 3rd & Read Aves. (Lots 128 and 129, Runnemede Manor.)

For the purpose of taking credit therefor in the sum of One Thousand Dollars, being the principal of the said bond; and, further tender the payment of the balance of said taxes and municipal liens, together with all taxes and municipal liens subsequent to January 1st, 1934, and up to and includ-

ing the taxes assessed for the year 1934, in full, with interest upon all delinquent taxes and assessments, in cash:

Now, Therefore, be it Resolved by the Mayor and Borough Council of the Borough of Runnemede, in the County of Camden, New Jersey, that the tax collector of the Borough of Runnemede, be and he is hereby authorized and directed to accept from the said Camden Optional Building and Loan Association and Harriett Haden, Bond No. 4, of the Temporary Improvement Bonds of the Borough of Runnemede, dated September 1st, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars, on which there is unpaid interest which fell due September 1st, 1932, on account of the payment of the principal of taxes and municipal liens and assessments upon premises assessed in the respective names of Camden Optional Building and Loan Association and Harriett Haden, as hereinabove set forth, which fell due prior to January 1st, 1934, and to give credit therefor, for said bond and interest, in the amount of the principal of the bond only to wit, one thousand dollars ($1,000.00), provided that the balance of the said municipal liens and taxes, together with taxes and municipal liens subsequent to January 1st, 1934 and the interest upon all delinquent taxes and municipal liens, be paid in full in cash; and, provided further, that said payment shall be made within fifteen days after the written assent of the Municipal Finance Commission to the adoption of this resolution shall have been received; and [fol. 370] Be it Further Resolved that the said tax collector, upon receipt of said bond, shall deliver the same to the borough treasurer.

Statement of Taxes and Assessments Due on Property of Camden Optional Building and Loan Association

(a) Lot #1, Block 15.—Oakland Avenue, Unpaid Balance, Sidewalk Assessment	$299.20
1931 tax—2nd half	48.99
1932 tax	88.92
1933 tax	92.12
Amount due prior to Jan. 1, 1934	$529.23
1934 tax, in full	89.16
Interest to Nov. 1, 1934	128.58
Total	$746.97

(b) Lot #16, Block 51.—Second Avenue, Unpaid balance, sidewalk assessment	$49.72
1931 tax—2nd half	37.64
1932 tax	64.35
1933 tax	67.20
Amount due prior to Jan. 1, 1934	$218.91
1934 tax, in full	65.04
Interest to Nov. 1, 1934	41.07
Total	$325.02

Statement of Taxes and Assessments Due on Property of Harriett Haden, Lot #3, Block 63, S. E. Cor. 3rd & Read Aves. (Lots 128 and 129, Runnemede Manor.)

Unpaid balance, sidewalk assessment	$334.63
1933 tax	99.40
Amount due prior to Jan. 1, 1934	$434.03
1934 tax, in full	96.20
Interest to Nov. 1, 1934	117.43
	647.66
Received a/c, by tax installments	72.66
Total Balance Due	$575.00

[fol. 371] The principal sum of taxes and assessments due prior to January 1, 1934, is:

Camden Optional B. & L. Assn., Lot #1, Block 15	$529.23
" " " " " " " #16 " 51	218.91
Harriett Haden, Lot #3, Block 63	434.03
	$1,182.17
Amount to be paid by use of bond	1,000.00

Total Amount of Taxes, Assessments, and Interest Due

Lot #1, Block 15, as above	$746.97
Lot #16, Block 51, as above	325.02
Lot #3, Block 63, as above	575.00
	$1,646.99
Payment by Borough of Runnemede, Temporary Improvement Bond #4, dated 9/1/26, due 9/1/32, rate 5¼%, denomination $1,000	1,000.00
Balance to be paid in cash on or before November 1st, 1934	$646.99

4. After a careful study of the items involved in the preceding schedules the following resolution was proposed:

5. Resolved that the Municipal Finance Commission give its formal consent in writing to the resolution set forth above:

6. Be it Further Resolved that such assent and approval is granted with the proviso that the cash payments received in satisfaction of the items set forth above be made on or before November 1, 1934 with the proviso that the cash derived from taxes of 1933 and prior years be held in a reserve fund and said taxes after being deposited to be separately accounted for in said reserve fund.

7. Be it Further Resolved that this approval is conditional upon the Borough Council making payments to the reserve funds within forty-eight hours after the receipt of any of the moneys referred to in the above schedule and upon further condition that the payments referred to represent all of the municipal liens or other charges now due against the property hereinabove named.

8. On motion of Commissioner Backes, seconded by Commissioner Martin the foregoing resolution was adopted by an unanimous vote.

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[fol. 372] Meeting of October 19, 1934

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5. Certified copy of a resolution adopted by the Borough Council of the Borough of Runnemede under date of September 20 as more particularly detailed below was considered.

Whereas, heretofore certain taxes and assessments were confirmed and levied by the Borough Council of the Borough of Runnemede in the County of Camden, New Jersey, covering lands of Samuel J. Rowand, now deceased, in what is known as the Shisler tract, and more particularly described as follows:

All that certain tract or piece of land in the Borough of Runnemede, County of Camden and State of New Jersey more particularly described as follows:

Beginning at an old stone in the centre of the Evesham Road, said stone being corner to formerly Halyburton

Realty Company's land and Samuel J. Rowand's land; thence (1) along the centre line of the Evesham Road North seventy-seven degrees thirty-one minutes east six hundred eleven and sixty-one-one hundredths feet to a point corner in same, corner to said Samuel J. Rowand and Dermont's lands; thence (2) along said Dermont's land North thirteen degrees thirty minutes west one hundred fifty-four and sixty-seven one-hundredths feet to an old stone corner to Rowand and Dermont: thence (3) along said Dermont and Rowand North seventy-five degrees fourteen minutes east two hundred seventy-six feet to an old stone corner to Rowand and Dermont; thence (4) still along the same South thirteen degrees thirty minutes East one hundred fifty-five and eighty-nine one hundredths feet to a point in the centre of Evesham Road; thence (5) along the centre of Evesham Road North seventy-seven degrees thirty-one minutes east nine hundred seventy-nine and twenty-five one-hundredths feet to the Westerly right of way line of the Camden County Railroad; thence (6) along said right of way line North thirteen degrees forty-one minutes west one thousand one hundred eighty-one and seventy-six one-hundredths feet to a point corner to said Rowand, Camden County Railroad and formerly Halyburton Realty Company's land; thence (7) along said (formerly) Halyburton Realty Company's land; South forty-four degrees fifty minutes west two thousand one hundred ninety and sixty-seven one-hundredths feet to the place of beginning.

Containing twenty-four and five one-hundredths acres of land, excepting thereout and therefrom the following lands:

No. 1. Lots 1 to 56 inclusive in Section C, on plan of L. P. Croxton, on January 29, 1926, known as Runnemede Terrace.

No. 2. Lots 1 to 39 inclusive in Section E, on said plan.

[fol. 373] No. 3. Lots Nos. 9 and 10, in Section D, on said plan.

No. 4. Lots Nos. 15, 16, 17 and 18 in Section B, on said plan.

No. 5. Lots Nos. 16, 17, 18, 19 and 20 in Section K, on said plan.

No. 6. Lots Nos. 5, 6, 13 and 14 in Section J, on said plan.

No. 7. Lots Nos. 4 to 28 inclusive, Section "H" on said plan.

No. 8. Lots Nos. 42, 43, 44 and 54-D, as shown on said plan.

And Whereas, Gertrude J. Rowand, Elva Thorn, Harris F. Thorn, Earl E. Rowand and Mary Rowand, the heirs of Samuel J. Rowand, deceased, and holders of title to the premises in question, have presented a deed to the Borough of Runnemede for the lands above described; and

Whereas, by reason of the acceptance of said deed the Borough of Runnemede is willing to cancel of record all taxes and municipal liens outstanding against said described lands:

Now, Therefore, be it Resolved by the Borough Council of the Borough of Runnemede, in the County of Camden and State of New Jersey, that the deed from Gertrude J. Rowand, Elva Thorn, Harris F. Thorn, Earl E. Rowand and Mary Rowand, heirs of Samuel J. Rowand, to the Borough of Runnemede, conveying the premises described in the preambles hereof, be and the same is hereby accepted; and

Be it Further Resolved that by reason of the acceptance of said deed the Collector of Taxes of the Borough of Runnemede be and he is hereby instructed and authorized to cancel of record on his books all municipal liens, taxes and assessments now appearing on his books against the lands included in said deed.

6. The following resolution was duly made and adopted by an unanimous vote: Resolved that the consent of the Municipal Finance Commission be given to the resolution adopted by the governing body of the Borough of Runnemede as more particularly detailed above which resolution provides for the acceptance of a parcel of land by the borough containing 24.05 acres situated in said borough and in the ownership of Gertrude Rowand, et als., providing the governing body has first satisfied itself before accepting said deed that the title to said premises is free and clear of all liens other than the taxes due on said land.

7. Collector Spencer filed with this commission a detailed statement showing the amount of taxes involved in the

transaction covered by the aforementioned resolution together with the layout of this particular tract. It was directed that this statement be filed as a part of the official records of this commission.

8. Certified copy of a resolution adopted by the Borough Council of the Borough of Runnemede under date of September 20 with respect to the authority of the borough collector to omit lands from the tax sales where such properties are subject to installment payments was duly noted. Attention was directed to the fact that wherever payments are being made in accordance with present statutes, such lands are permitted to be left out of any tax sale. However where any installments are in default there is no excuse for withdrawing such properties from the sale.

9. Communication from Collector Spencer accompanied by letter from the Camden National Bank and Trust Company re. property of Albert W. Wiedemann was carefully considered. It was the opinion of this commission that the collector might safely leave this property out of the tax sale if the bank will purchase a current tax anticipation note so that the money will be in the hands of the borough with the agreement that the note will apply to the taxes on the property. This in the opinion of the Commission was a fair and expedient method of handling the transaction in question.

[fol. 374] 10. Chairman Darby stated that the matter of the Runnemede Theatre had been discussed with him by the Borough Solicitor and there now appears to be possibility of leasing the theatre for a period of years. It was the opinion of the Commission that the lease should run for a period not to exceed five years and that the borough might well execute a lease if one could be secured on satisfactory terms. Chairman Darby reported that it seemed reasonably possible that some arrangements might be made to have this property produce a fair revenue.

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[fol. 375] Meeting of September 21, 1934

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4. Auditor Gary reported that some progress is being made in this borough inasmuch as another bond held by the

State had recently been cancelled from tax title moneys held in the trust account. The State being willing to cooperate along these lines, as and when funds are accumulated, bonds will be taken up.

5. The Runnemede situation appears to be promising and full cooperation is being accorded this Commission by all officials. This municipality should have a formal plan of refinancing prepared as soon as the work of this commission will permit, inasmuch as it appears that it would be possible to refinance without undue difficulty or delay and thus place the borough on a normal operating basis again.

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[fol. 376] Meeting of September 7, 1934

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[fol. 377] 7. Borough Clerk Gaunt submitted a letter reporting in detail with respect to the installation of a storm sewer under the railroad. He explains in his letter that this was not considered in connection with the 1934 budget because of excessive costs, but that the Borough engineer has now prepared a plan at an estimated cost of about $1,000.00. This cost is to be split three ways, the borough assuming one-third. He further advises that the negotiations may not be completed before the close of the present fiscal year.

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9. Certified copy of the following resolution of the Borough Council was filed with this Commission:

Whereas, the auditor of the Municipal Finance Commission of the State of New Jersey has requested this body to authorize the borough treasurer, and such other officials whose consent may be necessary, to give to the First National Bank of Blackwood, Blackwood, New Jersey, the thirty day notice required by the Federal laws for the withdrawal of savings fund accounts, the trust funds of the Borough of Runnemede being the payments made by property owners of the Borough on account of the principal of assessment liens and deposited in a savings account in said bank:

Now, Therefore, be it Resolved by the Mayor and Borough Council of the Borough of Runnemede, in the County of Camden, New Jersey, that the Borough Treasurer, and such other officers of the Borough of Runnemede as may be required so to do, be and they are hereby instructed and authorized to execute a notice to the First National Bank of Blackwood, Blackwood, New Jersey, in accordance with the laws of the United States of America, notifying said bank that the funds of the Borough of Runnemede now on deposit in said bank in a trust savings account numbered 4431, are to be withdrawn thirty days after the giving of such notice, the balance in said account as of August 31st, 1934, being the sum of $36,950.13, and said notice shall apply to all funds on deposit in said account as of the date of the giving of said notice and in addition thereto to any and all funds that may be deposited in said account from the date of the giving of the said notice until the date of the withdrawal thereof.

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II. There was submitted certified copy of a resolution adopted by the Borough Council on September 6, 1934 as more particularly detailed below:

Whereas, Lenora S. Snape, a taxpayer of the Borough of Runnemede, tenders bonds Nos. 1, 2 and 3, of the temporary improvement bonds of the borough of Runnemede, dated September 1st, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars each, which bonds matured September 1st, 1932, with interest thereon due September 1st, 1932, respectively, as payment upon account of the municipal liens, taxes and assessments in the name of Lenora S. Snape, levied and assessed against Block 29, lots 2 and 4, Borough of Runnemede, which said taxes and municipal liens fell due prior to January 1st, 1934; for the purpose of taking credit therefor in the sum of Three Thousand Dollars, being the principal of the said bonds; and, further tenders the payment of the balance of said taxes and municipal liens together with all taxes and municipal liens subsequent to January 1st, 1934, and up to and including the taxes assessed for the year 1934, in full, with interest upon all delinquent taxes and assessments, in cash:

Now, Therefore, be it Resolved by the Mayor and Borough Council of the Borough of Runnemede, in the County of Camden, New Jersey, that the Tax Collector of the Borough of Runnemede be and he is hereby authorized and directed to accept from the said Lenora S. Snape, Bonds Nos. 1, 2 and 3 of the temporary improvement bonds of the Borough of Runnemede, dated September 1st, 1926, due September 1st, 1932, interest rate 5¼ per centum, in the denomination of One Thousand Dollars each, on which there is unpaid interest which fell due September 1st, 1932, on account of the payment of the principal of taxes and municipal liens upon premises assessed in the name of Lenora S. Snape and consisting of two lots of land, being Block 29, lots 2 and 4, Borough of Runnemede, which fell due prior to January 1st, 1934, and to give credit therefor, [fol. 378] for said bonds and interest, in the amount of the principal of the bonds only, to wit, Three Thousand Dollars ($3,000.00), provided that the balance of the said municipal liens and taxes, together with taxes and municipal liens subsequent to January 1st, 1934 and the interest upon all delinquent taxes and municipal liens, be paid in full in cash; and, provided further, that said payment shall be made within thirty days after the written assent of the Municipal Finance Commission to the adoption of this resolution shall have been received; and

Be it Further Resolved that the said tax collector, upon receipt of said bonds, shall deliver the same to the borough treasurer.

Statement of Taxes and Assessments Due on Property Block 29, Lots 2 and 4, Borough of Runnemede, N. J. Assessed in the Name of Lenora S. Snape

Unpaid Balance, sidewalk assessment	$1,212.50
Interest and costs to date of tax sale, Nov. 5, 1931	390.72
1928 Taxes	253.00
1929 Taxes	240.35
1930 Taxes	234.85
1931 Taxes	262.90
1932 Taxes	374.40
1933 Taxes	196.00
1934 Taxes; 3/4 due Feb. 1, May 1 and Aug. 1	210.25
	3,374.97

Less, Paid a/c, 10/20/33 (Applied to 1928 taxes)	$150.00	
2/19/34 (Applied to 1934, 1st quarter)	49.00	
5/17/34 (Applied to 1934, 2nd quarter)	49.00	
		248.00
		3,126.97
Interest from Date of Tax Sale, Nov. 5, 1931 to September 20, 1934		681.51
Total due		$3,808.48

The principal sum of taxes and assessments due prior to January 1st, 1934, is:

Principal, sidewalk assessment	$1,212.50
1928 Taxes, balance ($253.00 less payment of $150.00 on 10/20/33)	103.00
1929 Taxes	240.35
1930 Taxes	234.85
1931 Taxes	262.90
1932 Taxes	374.40
1933 Taxes	196.00
Interest and costs to date of tax sale, November 5, 1931	390.72
Total	$3,014.72
[fol. 379] Total amount of taxes, assessments and interest to be paid	$3,808.48
Amount of taxes and assessments, due prior to January 1, 1934, being paid by three past due temporary improvement bonds, numbered 1, 2 and 3, $1,000.00 each, dated 9/1/26, due 9/1/32, rate of 5¼%, par value $3,000.00 with unpaid interest due September 1, 1932	3,000.00
Balance to be paid in cash on or before September 20, 1934	$808.48

12. After a careful study of the items involved in the preceding schedule the following resolution was proposed:

13. Resolved that the Municipal Finance Commission give its formal consent in writing to the resolution set forth above:

14. Be it Further Resolved that such assent and approval is granted with the proviso that the cash payments received in satisfaction of the items set forth above be made prior to September 20th, 1934 with the proviso that the cash derived from taxes of 1933 and prior years be held in a reserve fund and said taxes after being deposited to be separately accounted for in said reserve fund.

15. Be it Further Resolved that this approval is conditional upon the Borough Council making payments to the reserve funds within forty-eight hours after the receipt of any of the moneys referred to in the above schedule and upon further condition that the payments referred to represent all of the municipal liens or other charges now due against the property hereinabove named.

16. On motion of Commissioner Woolston, seconded by Commissioner Darby the foregoing resolution was adopted by an unanimous vote.

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18. It was the opinion of the Commission that the borough is making real progress in the collection of delinquent taxes. There was some discussion regarding the pending tax sale and it was agreed that a further report would be filed with this Commission at its meeting of September 21st.

[fol. 380] 19. Foreclosures were discussed at some length and Mr. Rothermel reported what had been done along these lines. It appears that a considerable amount of work has been done along these lines although there are still properties subject to foreclosure. The matter of costs is a feature of prime importance in these foreclosures thus wholesale proceedings cannot be undertaken.

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[fol. 381] Meeting of July 13, 1934

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5. Letters from the New Jersey Water Company bearing date of July 2nd and July 5th accompanied by a copy of a contract between the New Jersey Water Company and the Borough of Runnemede with respect to supplying the Borough with water for fire purposes were duly considered. Inasmuch as the contract appeared to be in accordance with

the terms of the statute, it was the opinion of the Commission that the contract should be continued in accordance with its present terms.

6. Communication from James A. Lynch, Jr., State Counsel for the Home Owners' Loan Corporation was read by Chairman Darby. This communication requested the governing body to eliminate interest penalties and costs in those cases where the Home Owners' Loan Corporation is about to grant a mortgage. It was directed that Mr. Lynch be communicated with and advised that the procedure of the Municipal Finance Commission was to consider each property individually and act upon each item separately after action had been taken by the governing body with respect to such matters.

7. Letters from J. Frank Hanly, S. G. Dilley, James P. Darby, Horace F. Nixon and William W. Wittmer, protesting against the proposed tax sale in the Borough of Runnemede were read by the Chairman and considered by the Commission. It was directed that these communications be answered along general lines in accordance with existing conditions.

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10. At this point Mayor Sheppard, Councilman Boyd and Solicitor Rothermel appeared before the Commission. Mr. Boyd as spokesman for the delegation stated that there were many objections being raised to the proposed tax sale in the borough. There was considerable discussion with respect to the pending sale and it was agreed by the Municipal Finance Commission that no action would be insisted upon until September 7th at which time the Borough council would be expected to report just what had been done with respect to securing payments in one way or another on past due taxes which under normal conditions would be included in the sale. The Commission advised that at the September meeting it would expect information as to just what had been accomplished in the period intervening between this meeting and the next stated meeting. The borough was put on notice that it should be in a position to render a full report at that meeting following which the Municipal Finance Commission would again consider the necessity of holding a sale.

[fol. 382] 11. Councilman Boyd inquired with respect to the rules of the Commission in permitting the Borough to accept bonds in the payment of taxes. It was explained that the general rule of the Commission was that where bonds were accepted in payment of taxes the prior year and current year's taxes and interest should be paid in cash and that such approval would be given only in the case of past due borough obligations.

12. Mr. Gary reported that the Borough had reduced its total indebtedness from $11,000.00 by the use of certain pledged funds for the reduction of the indebtedness to which these funds were specifically pledged.

13. The matter of the assent of this Commission to an emergency note for the relief of a flood condition in the Borough was discussed and it was advised that detailed and specific information was now being assembled, after which the request would be formally laid before the Municipal Finance Commission.

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[fol. 383] Meeting of June 22, 1934

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4. Chairman Darby read a communication of Borough Clerk Gaunt bearing date of June 9th addressed to the Commission with respect to the necessity of placing new pipe under the railroad to prevent flooding a certain area of the Borough during heavy storms. Copy of a letter from the Borough Engineer addressed to the Mayor and Council was attached to Mr. Gaunt's communication and it appears that the Railroad and the State may assume two-thirds of the cost with the borough assuming one-third.

5. Mr. Gaunt's letter was placed before the Commission with the idea that it would be necessary to secure the assent of this Commission to an emergency appropriation. After some discussion it was directed that the Borough be advised to submit its proposal in more detailed form before any definite action would be taken on the part of this Commission. The general statement that the Railroad Company and the State would participate in a part of this cost is in the opinion of this Commission insufficient to warrant consideration

without some definite agreement on the part of the participants.

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[fol. 384] Meeting of June 8, 1934

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4. Auditor Gary reported that he had attended a meeting of the Borough Council of the Borough of Runnemede held last evening and that he was well pleased with the spirit of cooperation manifest on the part of everyone present. He reported that in his opinion the books and records are in excellent shape and in general conditions in this borough are above average.

5. He further reported that there was some discussion with respect to holding a tax sale and it appeared desirable for the collector to proceed with this sale as quickly as possible after July 1st. The following resolution was proposed by Mr. Backes and adopted by an unanimous vote: Resolved that in the opinion of this Commission the Collector of the Borough of Runnemede should forthwith hold a complete tax sale after July 1, 1934.

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[fol. 385] Meeting of May 25, 1934

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3. Mr. Gary reported that he had visited the Borough of Runnemede and had made a rather extensive survey of conditions. He reported that the records were in very good shape and that the tax collector seemed to be very much on the job; furthermore there seemed to be a spirit of cooperation evident on all sides.

4. Mr. Gary reported that in the short time at his disposal he had been successful in securing information with respect to operating expenses of the borough for past periods, detail of outstanding indebtedness and the holders thereof and in addition had secured a great deal of information with respect to delinquent taxes, tax title liens, etc. The major problem of the borough appears to be a large accumulation of assessment title liens and tax title liens, not due to the limited number of holders of borough obliga-

tions the problem of refinancing would not appear to be difficult. In general Mr. Gary's report was optimistic and the Commission expressed itself as well satisfied with the conditions in this municipality.

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[fol. 386] Meeting of May 18, 1934

1. At the conclusion of the special meeting of the Municipal Finance Commission acting in and for the Township of Delaware, Chairman Darby announced that by virtue of an order of Justice Frank T. Lloyd, dated May 14th, the Municipal Finance Commission "is hereby authorized and instructed to function in the said Borough of Runnemede". In accordance with Chapter 340, P. L. 1931 as amended; it being stated in said petition that the said borough "is not in a position to meet its obligations when due, in spite of the endeavors of its duly constituted officers.".

2. It was directed that the order be spread in full on these minutes.

NEW JERSEY SUPREME COURT, CAMDEN COUNTY

In the matter of the petition of THE BOROUGH OF RUNNEMEDE, for supervision of its affairs by the Municipal Finance Commission of the State of New Jersey, pursuant to the provisions of P. L. 1931, Chapter 340, as amended by P. L. 1933, Chapter 330.

On Petition, etc.

ORDER

This matter being opened to the Court by petition which was previously presented to this Court on behalf of the Borough of Runnemede on or about the 7th day of May, 1934, and a rule to show cause having been issued pursuant to the statutes, returnable on this day before the undersigned; and pursuant to the direction of the statute a summary investigation into the facts having been made, and it having been established to my satisfaction from the testimony, under oath, of Wilson A. Boyd, one of the members of the Borough Council of the Borough of Runnemede and Chairman of the Finance Committee of said Borough, that the Borough of Runnemede at the present time is in de-

fault on interest on Borough obligations, which is past due in the sum of $31,252.50; that there is principal of borough bonds past due and in default in the sum of $173,000; that the Borough of Runnemede owes a total of $20,414.30, covering 1932 and 1933 State and County Taxes, which at present are past due and unpaid; and that the Borough of Runnemede owes to the Board of Education of the Borough of Runnemede the sum of $60,256.39, representing the 1933 and 1934 school levy, which sum should have been collected with the 1933 taxes of the Borough of Runnemede and is past due, making a total of obligations past due of $284,-92319; and

It further appearing, from the testimony of Wilson A. Boyd, as aforesaid, that the Borough of Runnemede has on hand to meet said obligations the sum of $2,021.90 in its current account the sum of $2,054.20 in its delinquent tax account including cash and scrip; the sum of $10,587.46 in its tax title lien account; the sum of $44.55 in its dog trust account, said funds being held to meet dog damage claims and which are available only for that purpose; the sum of $275.00 in its coupon account, representing coupons on bonds, past due, which have not yet been surrendered, and the sum of $31,077.12 in its trust saving account, representing principal of sidewalk assessments collected by the Borough, applicable to the payment of principal of its assessment bonds now outstanding and in default, or a total of $46,060.23; and

It further appearing that the Borough of Runnemede has outstanding delinquent taxes up to and including the year 1933, due and unpaid, in the sum of $69,452.11, and in addition thereto holds tax title and assessment liens in the sum of $275,104.40, of which approximately sixty (60%) per centum represents liens against unimproved land; and

It further appearing, from the above testimony, that the Borough of Runnemede is not in a position to meet its obligations when due, in spite of the endeavors of its duly constituted officers, and the said Borough of Runnemede having therefore petitioned this Court to have the Municipal Finance Commission of the State of New Jersey function in said municipality;

It is, therefore, on this 14th day of May, 1934, ordered and decreed that the Borough of Runnemede, a municipal corporation in the County of Camden and State of New

Jersey, is unable to meet its obligations when due despite the endeavors of its properly constituted officers; and

[fol. 387] It is Further Ordered that by reason thereof, the Municipal Finance Commission of the State of New Jersey, pursuant to the statute, is hereby authorized and instructed to function in the said Borough of Runnemede, with all powers and duties conferred by the statute hereinabove referred to; and

It is Further Ordered that a copy of this order, together with the petition and rule to show cause upon which this order is based, shall be filed in the Office of the Clerk of the New Jersey Supreme Court; and

It is Further Ordered that a copy of this order, which need not be certified, be served upon the members of the Municipal Finance Commission of the State of New Jersey, within five days from the date hereof.

(Signed) Frank T. Lloyd, Justice, New Jersey Supreme Court.

Entered May 15, 1934.
On Motion of George D. Rothermel.
A true copy? Fred L. Bloodgood, Clerk.

3. Commissioner Darby thereupon announced that the organization of the Commission would now be in order, Commissioner Martin nominated Commissioner Walter R. Darby as Chairman; there being no further nominations, Commissioner Darby was declared Chairman of the Municipal Finance Commission acting for and in behalf of the Borough of Runnemede. The Commission thereupon proceeded to name G. C. Skillman as Secretary to the Municipal Finance Commission acting for and in behalf of the Borough of Runnemede.

4. It was regularly moved, seconded and carried that for the present Mr. Frank L. Gary be appointed auditor to the Municipal Finance Commission acting in and for the Borough of Runnemede.

5. Mr. George D. Rothermel appeared before the Commission as the duly appointed solicitor for the Borough of Runnemede. Mr. Rothermel filed a list of the Borough officials for the year 1934 which list was directed to be made part of the official records of this Commission. (Exhibit A)

6. Mr. Rothermel reported that the financial difficulties of the Borough of Runnemede are substantially as outlined

in the petition and order filed with this Commission and that the outstanding indebtedness is substantially held by three creditors.

7. The present difficulties of the Borough are largely brought about by the fact that tax collections have fallen below normal and assessments for benefits which are pledged to a major part of the outstanding indebtedness of the borough cannot be realized upon.

8. The cash position of the Borough as at May 12th indicated $46,060.23 distributed as between current, trust and capital. The collector-treasurer has been segregating his collections and making monthly payments to the county treasurer in order to satisfy so far as possible the liability of the borough to the county.

9. It was reported for the record that the 1933 report of audit was completed and filed and that Fred L. Meade, a registered accountant of this State has been acting as auditor for several years past and as such auditor is familiar with the financial difficulties of the borough.

10. The borough depository is the First National Bank of Blackwood and it was directed that the secretary notify said bank of the temporary appointment of Mr. Gary as auditor to this Commission. It was further directed that the officials of the borough be advised that under the statute the auditor to the Municipal Finance Commission shall approve all vouchers before said vouchers are passed for payment as to the sufficiency of appropriation to which such vouchers shall be charged and that said auditor shall also countersign all checks as to the sufficiency of cash with which to pay any claims approved for payment by the borough council.

11. Mr. Gary was directed to visit the Borough of Runnemede at the earliest possible date and in conjunction therewith review the physical characteristics of the municipality, interview officials, etc.

[fol. 388] 12. Discussion followed with respect to the matter of a definite policy being established by this Commission with regard to its relations with creditors and it was regularly moved, seconded and carried that the Statement of Policy as previously prepared and submitted for the consideration of the members of the Commission be adopted for the present and notice be given to the municipality.

Questions have arisen as to the status of the Municipal Finance Commission with respect to creditors and the relations of such creditors to the municipality in which the Commission is operating. These questions of policy have been brought about by the refusal of this Commission to make public lists of creditors of the municipalities in which the Commission operates. It is the opinion of the Municipal Finance Commission that the statute by indirection at least confers upon the Commission powers and responsibilities akin to those which might be vested in a Creditors' Committee. The function of the Commission is to conserve the assets of the municipality and at the same time protect the interests of the creditors. In order to do this it must first consider the taxpayers of the municipality for it is only through their cooperation that the municipality can function as a going concern and it must then consider the problems and rights of the creditors of the municipality. The Commission therefore feels that it is conserving rights of the creditors and the interests of the municipality itself by taking a position that formal creditors committees need not be formed in any municipality in which the Commission operates. The Commission has not and will not furnish creditors or groups of creditors with lists of outstanding obligations and the holders thereof except and unless certain groups of creditors designate some particular creditor as a representative of such group or groups.

Public hearings to determine the outstanding claims of all municipalities under the jurisdiction of the Commission must be held in every municipality in which the Commission operates, therefore, there is an opportunity for the creditors to meet one another, exchange views and make suggestions and recommendations to the Commission. If as a result of these public hearings, groups are formed representing certain holdings the Commission will recognize such group or groups, but the Commission is interested in seeing that both creditors and ta-payers receive protection at minimum expense. It therefore feels that as a matter of policy the formation of creditors committees for municipalities in which it operates should be discouraged at least until such time as all creditors have been heard.

[fol. 405a] SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD

It is Hereby Stipulated and Agreed by and among counsel to the parties to this proceeding that this stipulation may serve in lieu of a praecipe, and that the record shall consist of the following papers:

(1) Docket entries;
(2) Bill of complaint, with annexed affidavit of John B. Dawson, verified June 8, 1936, and exhibits A, B, C, D and E, attached thereto;
(3) Subpoena with returns of service;
(4) Order to show cause, dated June 29, 1936;
(5) Order of continuance, dated July 17, 1936;
(6) Answer of Borough officials;
(7) Answer of Municipal Finance Commission;
(8) Opinion, per Avis, J.
(9) Order substituting S. Lewis Davis, Esq., in place of Honorable Joseph Varbarlow, as counsel for Borough officials;
(10) Findings of fact and conclusions of law;
(11) Final decree;
(12) Petition for appeal;
(13) Assignment of errors;
(14) Statement of jurisdiction under Rule 12;
(15) Order allowing appeal;
[fol. 405b] (16) Notice of service of above papers, specially directing attention to the provisions of Rule 12(3), in compliance with Rule 12(2), as to filing a statement in opposition to jurisdiction;
(17) Citation on appeal, with admission of service attached;
(18) Order extending time to file praecipe, dated September 12, 1938;
(19) Order extending time to file praecipe, dated September 26, 1938;
(20) Order extending time to file record and docket case, dated September 26, 1938;
(21) Order extending time to file praecipe, dated October 1, 1938;

(22) Order extending time to file record and docket case, dated October 21, 1938;

(23) Stipulation of parties, dated —— —, 1936;

(24) Exhibits 1, 2, 3, 4, 5, 6, 7 and 12 attached to the said stipulation;

(25) Narrative statement of testimony, attached hereto;

(26) Exhibits P-1, P-2, D-1, D-2 and D-3, introduced into evidence;

(27) A portion of the testimony in a suit in equity in the United States District Court for the District of New Jersey, Barker v. North Bergen, E-5025 attached hereto;

(28) Narrative statement of the testimony, attached hereto, taken, and the exhibits introduced in a mandamus [fol. 405c] proceeding in the United States District Court for the District of New Jersey, United States ex rel. Sovereign Camp, Woodmen of the World v. Board of Education of Runnemede, L-5224;

(29) Narrative statement, attached hereto, of a portion of the testimony in a mandamus proceeding in the United States District Court for the District of New Jersey, United States ex rel. Norfolk & Western Rwy. v. Township of Chester, L-5013;

(30) Certain portions of the certified minutes of the New Jersey Municipal Finance Commission acting in and for the Borough of Runnemede, attached hereto, marked Exhibit 14;

(31) Certain financial records as to the twelve municipalities in which the New Jersey Municipal Finance Commission is functioning, together with similar statements as to the municipalities of Lakewood, Moonachie, Neptune City, West New York, and Woodbridge, marked Exhibits 16-a to 16-q;

(32) Certain statements of cash in current and trust accounts on hand and statements of certain liabilities of the seventeen above-named municipalities, marked Exhibits 17 and 18-a to 18-q inclusive;

(35) This stipulation.

It is hereby stipulated and agreed that the narrative statements of testimony referred to in items 25, 28 and 29 above fairly state the substance of said testimony, and that

[fols. 405d-411] any order of approval necessary to item 25 may be entered hereon.

October 20, 1938.

William A. Stevens, Solicitor for Appellants David T. Wilentz, et al. S. Lewis Davis, Solicitor for Appellants Earl Kircher, et al. Arthur T. Vanderbilt, Solicitor for Respondent.

[fols. 412-423] Orders extending time for transmitting record, etc., are omitted in printing.

[fol. 423a] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 424] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED ON—Filed November 3, 1938

Come now the appellants and adopt the following as their statement of the points to be relied upon, and represent that the whole of the record, as filed, is necessary for the consideration of the case, save and accept that only such portions of Exhibit 14, being the minutes of the Municipal Finance Commission of the State of New Jersey, acting in and for the Borough and School District of Runnemede, Camden County, New Jersey, is necessary for the consideration of the case, or need be printed, as is designated in a designation of portions of said Exhibit to be printed, dated October 27, 1938, and filed herewith:

[fol. 425] 1. The said Court erred in assuming jurisdiction of the suit.

2. The said Court erred in assuming jurisdiction of the suit, under Section 266 of the Judicial Code.

3. The said Court erred in ruling in effect that complainant properly grounded its bill's jurisdictional averments on Section 266 of the Judicial Code.

4. The said Court erred in ruling in effect that complainant was entitled to any relief, legal or equitable, under Section 266 of the Judicial Code.

5. The said Court erred in ruling in effect that complainant presented a proper cause of action, legal or equitable, for trial under Section 266 of the Judicial Code.

6. The said Court erred in permitting trial of the declaratory judgment action under Section 266 of the Judicial Code.

7. The said Court erred in granting any relief under Section 274-d of the Judicial Code.

8. The said Court erred in ruling in effect that complainant presented a proper cause of action, legal or equitable, for trial under Section 274-d of the Judicial Code.

9. The said Court erred in denying these defendants' motion to remit the suit for trial to a single judge of the United States District Court for the District of New Jersey.

10. The said Court erred in holding that any cause of action, legal or equitable, existed under the allegations — Count I of the bill of complaint.

11. The said Court erred in holding that the evidence in the case supported the demand for relief under Count I of the bill of complaint.

[fol. 426] 12. The said Court erred in not dismissing Count I of the bill of complaint.

13. The said Court erred in granting any of the prayer for relief under Count I of the said Bill of complaint.

14. The said Court erred in not dismissing Count II of the bill of complaint.

15. The said Court erred in holding that any cause of action, legal or equitable, existed under the allegations of Count III of the bill of complaint.

16. The said Court erred in holding that the evidence introduced supported the demand for relief under Count III of the bill of complaint.

17. The said Court erred in not dismissing Count III of the bill of complaint.

18. The said Court erred in granting any of the prayers for relief under Count III of the said bill of complaint.

19. The said Court erred in holding that any cause of action, legal or equitable, existed under the allegations of Count IV of the bill of complaint.

20. The said Court erred in holding that the evidence introduced supported the demand for relief under Count IV of the bill of complaint.

21. The said Court erred in not dismissing Count IV of the bill of complaint.

22. The said Court erred in granting any of the prayers for relief under Count IV of the bill of complaint.

23. The said Court erred in issuing any injunction or restraint against defendant Municipal Finance Commission, in answer to subdivision B of Count I of the bill of complaint.

24. The said Court erred in granting any relief in answer to subdivision B of the prayers of Count I of the bill of complaint.

[fol. 427] 25. The said Court erred in permanently enjoining and restraining defendant Municipal Finance Commission from functioning in the Borough of Runnemede, New Jersey, to the extent that such functioning may be inconsistent with the right of complain-t to enforce its execution in the manner stated in the Final Decree.

26. The said Court erred in permanently enjoining and restraining defendant Municipal Finance Commission from enforcing any stays contained in the Municipal Finance Commission Act insofar as the stays therein contained affect the right of complain-t to enforce its judgment.

27. The said Court erred in failing to rule that the plaintiff had an adequate remedy at law to overcome any unconstitutional stays contained in the Municipal Finance Commission Act.

28. The said Court erred in failing to rule that the stays contained in the Municipal Finance Commission Act were constitutional.

29. The said Court erred in ruling, in answer to subdivision D of the prayers of Count I of the bill of complaint, that Rev. St. New Jersey (1937), 52:27-1, 2, 3, 4, 9, 22, 23,

25, 26, 32.1, 33 (being Chapter 330, Laws of New Jersey, 1933) and 52:27-46 through 63, 65, 66 (being Chapters 195 and 258, Laws of New Jersey, 1935), as amended and supplemented, are unconstitutional and void.

30. The said Court erred in ruling, in answer to subdivision D of the prayers of Count I of the bill of complaint, that Rev. St. New Jersey (1937), 52:27-1, 2, 3, 4, 9, 22, 23, 25, 26, 32.1, 33 (being Chapter 330, Laws of New Jersey, 1933) and 52:27-46 through 63, 65, 66 (being Chapters 195 and 258, Laws of New Jersey, 1935), as amended and supplemented, are unconstitutional and void insofar as they [fol. 428] effect the right of the complainant to enforce its judgment obtained and entered in the United States District Court for the District of New Jersey.

31. The said Court erred in ruling, in answer to subdivision F of the prayers of Count I of the bill of complaint, that the enforcement of the complainant's judgment should be in accordance with the laws existing in the State of New Jersey at the time of the issuance and sale of the bonds in question.

32. The said Court erred in ruling, in answer to subdivision F of the prayers of Count I of the bill of complaint, that the enforcement of complainant's judgment should be in accordance with and under the provisions of Section 35 of the Execution Act (2 Comp. Stats., p. 2256) and Rev. St. New Jersey (1937), 2:26-85 (being Section 237 of the School Law (4 Comp. Stats., p. 4804).

33. The said Court erred in ruling that Section 35 of the Execution Act (2 Comp. Stats., p. 2256) and Rev. St. New Jersey (1937), 2:26-85 (being Section 237 of the School Law (4 Comp. Stats., p. 4804) were not repealed by the provisions of Rev. St. New Jersey (1937), 2:26-84, 54:4-42, 43, 44 (being the Tax Act of 1918, c. 236, s. 505).

34. The said Court erred in not denying sub-division D of the prayers under Count II of the bill of complaint completely and in their entirety.

35. The said Court erred in not denying sub-division E of the prayers of Count II of the bill of complaint completely and in their entirety.

36. The said Court erred in issuing any injunction or restraint against defendant Municipal Finance Commission

in answer to sub-divisions B, C, D, E, and F of the prayers of Count III of the bill of complaint.

[fol. 429] 37. The said Court erred in granting any relief in answer to sub-divisions B, C, D, E, and F of the prayers of Count III of the bill of complaint.

38. The said Court erred in ruling in effect that acceptance of bonds in settlement of taxes may materially interfere with the complainant in the enforcement of its judgment.

39. The said Court erred in enjoining and restraining defendant from making settlements for taxes due and owing to the Borough of Runnemede, New Jersey, by any medium "except in accordance with the laws of the State of New Jersey".

40. The said Court erred in enjoining and restraining defendants from accepting bonds in settlement of taxes.

41. The said Court erred in granting any relief in answer to sub-division B of the prayers of Count IV of the bill of complaint.

42. The said Court erred in ruling that Rev. St. New Jersey (1937) 52:27-32.1 and 33 (being Sections 8 and 9 of Chapter 330, Laws of New Jersey, 1933) and 52:27-33.2; and 52:27-46 through 63, 65, 66 (being Chapters 191, 195 and 258, Laws of New Jersey, 1935), all as amended and supplemented, are, as to school district bonds held by complainant issued prior to their enactment, as and when judgment may be entered thereon or on any portion thereof, in the United States District Court for the District of New Jersey, and execution issued, unconstitutional and void.

43. The said Court erred in ruling that Rev. St. New Jersey (1937) 52:27-32.1 and 33 (being Sections 8 and 9 of Chapter 330, Laws of New Jersey, 1933) and 52:27-33.2; and 52:27-46 through 63, 65, 66 (being Chapters 191, 195 and 258, Laws of New Jersey, 1935), all as amended and [fol. 430] supplemented, are, as to school district bonds held by complainant issued prior to their enactment as and when judgment may be entered thereon or on any portion thereof, in the United States District Court for the District of New Jersey, and execution issued, unconstitutional and void insofar as they affect the right of the complainant to enforce such a judgment.

44. The said Court erred in ruling that Rev. St. New Jersey (1937) 52:27-32.1 and 33 (being Sections 8 and 9 of Chapter 330, Laws of New Jersey, 1933) and 52:27-33.2; and 52:27-46 through 63, 65, 66 (being Chapters 191, 195 and 258, Laws of New Jersey, 1935), all as amended and supplemented, are, as to school district bonds held by complainant issued prior to their enactment, as and when judgment may be entered thereon, or on any portion thereof, in the United States District Court for the District of New Jersey, and execution issued, unconstitutional and void, as being contrary to Article I, Section 10, of the Constitution of the United States, which provides that no state shall pass any law impairing the obligation of contracts.

45. The said Court erred in granting any relief in answer to sub-divisions C and D of the prayers of Count IV of the bill of complaint.

46. The said Court erred in issuing any permanent injunction or restraint against defendant Municipal Finance Commission in answer to sub-divisions C and D of the prayers of Count IV of the bill of complaint.

47. The said Court erred in any wise permanently enjoining and restraining defendant Municipal Finance Commission from functioning in the Borough of Runnemede, New Jersey.

48. The said Court erred in permanently enjoining and restraining defendant Municipal Finance Commission from functioning in the Borough of Runnemede, New Jersey, to [fol. 431] the extent that such functioning "may be inconsistent with the right of the complainant to enforce in the manner herein stated executions to be issued in this Court upon judgments entered upon such school district bonds".

49. The said Court erred in ruling in effect in answer to subdivisions C and D of the prayers of Count IV of the bill of complaint that the stays contained in the Municipal Finance Commission Act affect the right of the complainant to enforce such a judgment.

50. The said Court erred in making said Final Decree granting said injunctions and restraints and in issuing said Final Decree, in that it failed to recognize the Laws of New Jersey, as a matter of comity.

51. The said Court erred in making said Final Decree granting said injunctions and restraints and in issuing said Final Decree, in that it abused its discretion as to the making of said Final Decree, and the issuing of said Final Decree, and made said Final Decree and issued said Final Decree arbitrarily and capriciously.

52. The said Court erred in failing to rule that the relators should be remitted to their remedies under the Municipal Finance Commission Act. i. e., Rev. St. New Jersey (1937), 52:27-1, 2, 3, 4, 9, 22, 23, 25, 26, 32.1, 33 (being Chapter 330, Laws of New Jersey, 1933), as amended and supplemented.

53. The said Court erred in granting an injunction under Section 266 of the Judicial Code against the acts of local municipal officers when there was no basis for an injunction against the acts of state officers.

54. The said Court erred in making said Final Order granting said Final Decree of injunction and restraint and in issuing said Final Decree, in that it failed to recognize as a matter of comity the Municipal Finance Commis-[fol. 432] sion Act, i. e., Rev. St. New Jersey (1937), 52:27-1, 2, 3, 4, 9, 22, 23, 25, 26, 32.1, 33 (being Chapter 330, Laws of New Jersey, 1933), as amended and supplemented.

55. The said Court erred in making said Final Order, granting said Final Decree of injunction and restraint, and in issuing said Final Decree, in that it failed to follow the laws of the State of New Jersey as required by United States Code, Section 727 and Rule 40 of the General Rules of the District Court of the United States, District of New Jersey, adopted January 1st, 1933, and effective as of that date.

56. The said Court erred in ruling that the complainant was entitled to a Final Decree of injunction and restraint as a matter of discretion.

57. The said Court erred in ruling that the complainant was entitled to a Final Decree of injunction and restraint as a matter of law.

58. The said Court erred in ruling that the complainant was entitled to a Final Decree of injunction and restraint as a matter of right.

59. The said Court erred in making the Final Decree in said suit, dated the 6th day of June, 1938.

60. The said Court erred in issuing the Final Decree in said suit, dated the 6th day of June, 1938.

61. The said Court erred in ruling in effect that the terms of the said Final Decree in said suit, dated the 6th day of June, 1938, are reasonable and just in the light of the evidence.

62. The said Court erred in failing to strike out all testimony relating to the question of relative values of bonds of New Jersey municipalities before and after 1932. Complainant's counsel on direct examination interrogated com- [fol. 433] plainant's witness Morris Mather as follows:

"Q. Prior to the year 1932 were you buying and recommending in New Jersey municipal bonds to your customers?
A. Yes, very actively.
Q. Are you doing so today?
A. No.
Q. Will you state why?

Thereupon solicitor for your petitioners moved to strike out the question and obtain a ruling against the line of testimony on the ground that there was no issue under the pleadings before the Court upon which the question of relative values of the bonds of New Jersey municipalities before and after 1932 would be relevant. This motion was based on the contention that there was no cause of action for a declaratory judgment stated against the Municipal Finance Commission. After hearing argument the court below ruled as follows:

"Judge Davis: Well, gentlemen, we are in doubt about the relevancy of this testimony and one good rule is that when in doubt admit it. If we later come to the conclusion that it is relevant and helpful we will disregard it. So we will admit the testimony and grant you an exception, Mr. Dimock."

63. The said Court erred in failing to strike out the answer of complainant's witness Morris Mather. On direct examination complainant's solicitor questioned the witness as follows:

"Q. Will you state why you are not now recommending New Jersey bonds to your customers?

A. Why, they won't buy them.

* * * * * * *

Mr. Dimock: I move to strike out the answer on the ground that it is hearsay.

Judge Davis: We will overrule your motion and grant you an exception."

[fol. 434] 64. The said Court erred in failing to strike out the answer of complainant's witness Morris Mather. On direct examination complainant's solicitor questioned the witness as follows:

"Q. Why would you not buy New Jersey bonds?

A. We have had occasions to submit the transcripts of proceedings to several of our clients for examination——

Mr. Dimock: May I have the same exception to this?

Judge Davis: Yes.

A. —and these clients invariably are subject to their attorneys approval of papers, and in the case of many of our large buyers they will not approve of them as an investment for our clients."

65. The said Court erred in failing to strike out the answer of complainant's witness Morris Mather. On direct examination complainant's solicitor questioned the witness as follows:

"Q. And has the marker for New Jersey bonds reflected the fact that larger buyers would no longer buy New Jersey municipal bonds?

Mr. Dimock: I object on the ground that it calls for a conclusion.

Judge Davis: Overruled. Exception granted.

A. The market, I would say particularly in the middle west, has been seriously affected because you cannot sell New Jersey bonds out there any more."

This motion was directed to testimony by complainant's witness Morris Mather then the president of complainant had advised him that complainant would refuse to purchase New

Jersey bonds as long as An Act concerning Municipal Finances was in existence.

66. The said Court erred in failing to strike out the answer of complainant's witness Morris Mather. On direct examination complainant's solicitor questioned the witness as follows:

[fol. 435] "Mr. Grossman: I move to strike out all of the testimony of this witness for the reason that his testimony is not directed to any effect upon bonds of the school district of Runnemede which are involved in this suit by reason of the provisions of the Municipal Finance Commission Act.

Judge Davis: Motion overruled.

Mr. Grossman: I ask for an exception.

Judge Davis: Yes, you may have an exception."

The said motion immediately followed testimony by complainant's witness Morris Mather that he and his firm had never dealt in any bonds of the Borough of School District of Runnemede, New Jersey.

67. The said Court erred in failing to strike out the answer of complainant's witness John E. Woodbridge. On direct examination complainant's solicitor questioned the witness as follows:

"Mr. Dimock: May I renew my motion to strike out all of this testimony on the ground there is no probative value on the issue on which it is offered?

Judge Avis: Motion overruled. You may have an exception."

The said motion immediately followed the testimony given by complainant's witness John E. Woodbridge that he had compared the prices of certain New Jersey municipal bonds with the prices of certain other municipal bonds in cities comparable only on a basis of population and debt per capita.

Wherefore, the defendants pray that the said Decree be reversed and the United States District Court for the District of New Jersey be directed to dismiss the bill, and for such other lawful relief as may be just and equitable in the premises.

The said Statement of Points to be relied on, presented herein, is identical with the assignment of errors hereto-

fore filed, save and except that there has been added to the [fol. 436] references of the Pamphlet Laws of New Jersey therein set forth, references to the new official Revised Statutes of the State of New Jersey (1937), because such new references are used in the statement of jurisdiction under Rule 12.

Dated: November 2nd, 1938.

E. J. Dimock, Solicitor for Appellants.

[fol. 437] SUPREME COURT OF THE UNITED STATES

DESIGNATION AS TO RECORD—Filed November 3, 1938

To the Clerk of the Supreme Court of the United States:

The appellants in the above appeal hereby designate the following portions to be printed of Exhibit 14, being the minutes of the Municipal Finance Commission of the State of New Jersey, acting in and for the Borough and School District of Runnemede, Camden County, New Jersey:

Date	Paragraphs
May 18, 1934	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12
May 25, 1934	3, 4
June 8, 1934	4, 5
June 22, 1934	4, 5
July 13, 1934	5, 6, 7, 10, 11, 12, 13
September 7, 1934	7, 9, 11, 12, 13, 14, 15, 16, 18, 19
September 21, 1934	4, 5
October 19, 1934	5, 6, 7, 8, 9, 10
October 26, 1934	3, 4, 5, 6, 7, 8
November 16, 1934	4, 5, 6, 7, 8, 9,
December 14, 1934	5, 9, 10
December 21, 1934	5, 6
[fol. 438] January 11, 1935	6, 6a, 6b, 6c, 6d, 6e,
January 25, 1935	4, 4a, 4b, 4c, 4d, 4e, 5, 6, 6a, 6b, 6c, 6d
February 8, 1935	5, 5a, 6, 62,
March 1, 1935	7, 9, 10, 11, 11a
March 15, 1935	5, 5a
March 22, 1935	3, 3a, 4
April 12, 1935	5, 6, 6a, 6b, 7, 7a, 7b, 7c, 7d, 7e
April 26, 1935	5, 6, 6a, 6b, 6c, 6d, 6e

Date	Paragraphs
June 7, 1935	7, 8
July 12, 1935	3, 4, 9, 10, 10a
July 22, 1935	2, 2a
August 26, 1935	3, 3a, 3b, 3c, 3d, 3e
September 6, 1935	7, 12
October 4, 1935	6, 7, 7a, 7b, 7c, 7d, 7e, 7f
November 1, 1935	7, 8, 8a
December 6, 1935	7
December 13, 1935	4
January 3, 1936	6
January 17, 1936	5
January 22, 1936	1, 2, 3, 4, 5, 52, 6
January 31, 1936	6, 6a, 6b, 6c, 7, 7a, 7b, 7c, 7d, 7e, 7f
February 7, 1936	3, 3a, 3b, 3c, 3d, 3e,
February 14, 1936	4, 4a, 4b, 4c, 4d, 4e, 4f, 5
February 28, 1936	6, 8, 8a, 8b, 8c, 8d, 8e, 9, 10, 10a, 10b, 10c, 10d, 11
March 13, 1936	5, 6, 7
March 27, 1936	4, 4a, 4b
April 3, 1936	4
April 17, 1936	6, 7, 8
May 15, 1936	4, 7, 7a, 7b, 7c, 7d, 7e, 7f
May 29, 1936	5
June 12, 1936	4
[fols. 439-440] June 19, 1936	4, 5
July 2, 1936	6, 6a
July 10, 1936	4
July 17, 1936	4, 4a, 5, 5a, 6
September 4, 1936	9, 10, 10a, 12
September 11, 1936	6, 7a, 7b, 7c, 7d, 7e
September 18, 1936	5, 6, 8
September 25, 1936	2, 3
October 2, 1936	3, 3a, 3b, 3c, 3d, 3e, 3f, 3g, 4

October 27, 1938.

E. J. Dimock, Solicitor for Appellants, 49 Wall Street, New York City, N. Y.

[fol. 441] [File endorsement omitted.]

Endorsed on cover: Enter E. J. Dimock. File No. 42,933. New Jersey, D. C. U. S. Term No. 448. David T. Wilentz, J. H. Thayer Martin and Walter R. Darby, etc., et al., appellants, vs. Sovereign Camp, Woodmen of the World. Filed October 31, 1938. Term No. 448, O. T., 1938.

(9516)

Hardbridge

EXHIBITS 16-a to 16-q

16-a

	1930	1931	1932
School Debt as of June 30	1279000	1311000	1247000
Funded Debt	1089394	1079394	1049394
Due state & county	— 0 —	933076	1179504
Due local schools	1851889	1145046	3619437
Miscellaneous Payable			
	5554189	6069116	7687937
1930 Census	77276		
Per capita debt	71983	76158	76270
Assessed Valuation	19398562	19636204	18181371
Debt per dollar of assessed valuation	29%	34%	37%
Total Tax Levy	1166518	1183790	1189367
Tax rate per 100	1605	1664	1577
No of acres & lots	58684	59289	59614
Acreage tax bill			
Tax collections (current yr)	710794	638167	610392
% of levy			
Prior yrs			
Tax Title Lien collections	990198	1796761	3977114
Total collection of taxes	613374	863149	898401
	9555480	9907584	8790960
Tax Title Liens - Foreclosed or repaired			
Defaults: Principal		166000	187698
Interest			

a to 16-q

a

1931	1932	1933	1934	1935	1936	
311 000	1747 000	1747 000	1730 000	1777 000		
1979 379 45	1889 516 98	1904 630 99	1976 753 44	1753 441 41	*	
93 310 76	229 504 52	83 336 -	257 040 42	3050 [illegible]	309 510 24	
1745 047 76	361 914 37	436 560 86	360 870 52	[illegible]	281 565 14	
			510 017			
609 147 67	1687 935 87	1071 187 17	1689 750 52	1669 811 03		
8 194	6 270	6 715	7 031	11 594		
9636 [illegible]	1818 171	1799 100	1782 [illegible]	1991 [illegible]	1980 865 -	
24%	37%	39%	38%	32%		
1837 901	1189 320 67	1158 [illegible]	1351 350 80	1213 614 49	1 393 17 [illegible]	
(6.6)	(5.7)	(5.7)	(6.7)	(5.63)	(6.5)	
59 289	59 614	59 614	59 539	59 691	59 691	
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Fort Lee

	1930	1931	1932
School debt as of June 30	$817,000	$787,000	$757,000
Funded Debt	$106,941	$131,941	$899,941
Due State & County	—0—	—0—	111,000
Due local schools	137,857.87	140,856.42	196,074.[illegible]
Miscellaneous Payable	$61,793.87	$59,797.42	$63,410.[illegible]
1930 Census per capita debt	$7.54		
	$77.90	$77.61	$61.[illegible]
Assessed Valuation	$12,779,707	$13,775,790	$12,313,15[illegible]
Debt per dollar of assessed valuation	4.1%	4.1%	3.[illegible]
Total Tax Levy	$755,335.44	$807,535.15	$857,15[illegible]
Tax rate per 100	(6.01)	(6.14)	[illegible]
No of accts & lots	9840	14115	13875
Average tax bill	76.76	57.21	61.[illegible]
Tax collections (current & prior)	$509,259.28	$568,407.15	$46,29[illegible]
	67%	63%	[illegible]
Tax Title Liens collected	168,221.65	229,236.42	168,[illegible]
Total collection of taxes	—0—	109,812.42	169,[illegible]
	677,480.93	738,456.63	626,7[illegible]
Tax Title Liens Foreclosed or acquired			
Defaults Principal			
Interest			

1930	1931	1932	1933	1934	1935	1936 6 months
						*

Lunenburg

	1930	193
School Debt as of June 30	184645	176 0
Funded Debt	445877 37	445 3
Due state + county	— 0 —	70 6
Due local schools	75445	35 5
Miscellaneous Payable		
	630717 37	656 7
1930 Census	7436	
Per capita debt	7138	7
Assessed Valuation	10611777	7107 7
Debt per dollar of assessed valuation	319.	
Total Tax Levy	81105 94	100 6
Tax rate per 100 ÷	(4.71)	
No of acres & lots	6"03	6
Average tax bill	1314	
Tax collection (Current year)	77	37
(% of levy)	95%	
(Prior yrs)	7469 75	36
Tax Title Liens collected	1430	—
Total collection of taxes	62885	72
Tax Title Liens Foreclosed or acquired	— 0 —	—
Defaults: Principal		700
Interest		

1930	1931	1932	1933	1934	1935	1936 6 months				
						*				
						*				
						30801 79				
						8065105				

Boro Neptune City

	1930	19
School Debt as of June 30	13[illegible]000	13[illegible]0
Funded Debt	37[illegible]781	[illegible]
Due state & county	— 0 —	[illegible]
Due local schools	3[illegible]9	[illegible]
Miscellaneous Payable		
	$71 15500	63[illegible]
1930 Census	[illegible]718	
Per capita debt	[illegible]2035	[illegible]
Assessed Valuations	[illegible]6 [illegible]	1901
Debt per dollar of assessed valuation	3190	[illegible]
Total Tax Levy	85[illegible]93	10[illegible]10
Tax rate per 100	(5[illegible])	
No. of acres & lots	3[illegible]03.	3[illegible]0
Acreage tax bill	[illegible]7768	[illegible]
Tax collections (current year)	29[illegible]60.	50[illegible]
% of levy)	(56[illegible])	[illegible]
Prior years	[illegible]38780	[illegible]
Tax Title Lien collections	75049	[illegible]
Total collection of taxes	7[illegible]89	7[illegible]
Tax Title Liens - Foreclosed or acquired		
Defaulted Principal		
Interest		

d

30	1931	1932	1933	1934	1935	1936
000	135000	126000	120000	110000	104000	
1781	458073	3743598	10191973	10191973	3978063	*
0 —	119617	708096	1887	1832805	1713136	1531752
9119	1984719	3585500	3677750	1581450	1881750	
15500	6346359	5609839	5796795	5411737	5378469	
88						
12038	1807	1898	1551	1986	1828	
155	1901485	2036000	1961711	1956900	1975825	1901905
31%	32%	28%	44%	28%	28%	
1593	10230818	9596736	9505547	9280338	10067006	11294077
(5.71)	(5.16)	(4.71)	(4.71)	(4.77)	(5.21)	(5.93)
103	3203	3203	3203	3203	3218	3851
7768	31188	29600	29868	28597	31176	37961
0735	5055901	3682446	3430649	3959287	4276197	1577411
(18%)	(49%)	(38%)	(36%)	(43%)	(42%)	(14%)
8980	1755276	2816585	3164553	2483085	2796464	1728603
5149	270000	3901151	1528074	1895497	1659785	
9489	7438547	6957419	7873776	8830153	7982850	8807904
		498718	617923	1549193	1546723	1540000
						8967150

* Treasurer's Report

Asbury Park

	1930	1
Funded Debt	1180370	1703
Due state + county	—0—	79
Due local schools	1748764	5
Miscellaneous Payable		
	2976064	17378
1930 Census	14981	
Per capita debt	19907	
Assessed Valuation	36511113	3645
Debt per dollar of assessed valuation	33%	
Total Tax Levy	1813110	1744
Tax rate per 100 ÷	14931	
No of acres + lots	3911	3
Cockage tax bill	46351	
Tax collection (Current Year)	1001997	90
% of levy	(55%)	
Prior Yrs		
Tax Title Liens collected	578491	68
Total collection of taxes	179184	
	1550075	1592
Tax Title Liens Foreclosed or acquired		
Defaults: Principal	46870	43
Interest		
School Debt		

1930	1931	1932	1933	1934	1935	1936 9 months	
						*	
—	—	—	—	—	—	—	—
					—	—	—
					39435		
79607	82928	80905	81733	79948	77351		
33%	34%	34%	36%	36%	44%		
(16.31)	(15.75)	(15.87)	(15.97)	(15.36)	(16.00)	(5.79)	
3911	3915	3915	3935	3938	3964	3938	
39637	39777	39275	39700	39397	39674	38016	
(55%)	(52%)	(46%)	(45%)	(54%)	(31%)	(70%)	
78491	68080	57095	59302	70580	43159	18753	38
29184	39508	38994	19500	19851	14019	7714	26
107675	107588	96089	78802	90431	57178	26467	64
4870	35000	—	35437000	3576	10550	703	13699

* Figures unavailable.

Town

West New York

16-1

	1930	1931
Funded Debt	$386,303.—	$583,700.—
Due state & county		
Due local schools		
Miscellaneous Payable	173,650	177,975
	12,930.16	33,790
1930 Census	$7,883,444	$8,068,946
Per capita debt	37,107	
Assessed Valuation	1,501,850	1,564,492
Debt per dollar of assessed valuation	$5.24.6,773	$5.06.5.68
Total Tax Levy	1870.	1170.
Tax rate per $100	$5.62.2,2,2,2,2,561	2,706,5,2,2
No. of acres & lots	(496)	493
Average tax bill		
Tax collections Current Year	513.42	517.44
(% of Levy)		
Prior years	1677,19.5.98	1639 6.2.70.4
Tax Title Lien collectable	65%	(64%)
Total collection of taxes	666,9.4.58	770,128.77
	1,131.33	1650.77
	734.5.773.19	7.4.11.2.1.08.1
Tax Title Liens foreclosed or acquired		
Defaults: Principal		
Interest		

	1930	1931	1932	1933	1934	1935	1936

North Bergen

	1930	19
Funded Debt	19798690 79	18481
Due State & County	— 0 —	— 0 —
Due Local Schools	340100	337
Miscellaneous Payable		
	19638790 79	18151
1930 Census	40714	
Per capita debt	487 35	
Assessed Valuation	56951471	57790
Debt per dollar of assessed Valuation	34%	
Total tax levy	2864 17599	2185
Tax Rate per $100	5603	
No of acres & lots	8500	8
Average tax bill	3340	
Total collections (Current Year)	16758370	7170
% of Levy	(567)	
(Prior years)	2977763	707
Tax Title Liens collected	750969	16
Total collections of Taxes	20477725	7890
Tax Title Liens Foreclosed or acquired	— 0 —	—
Default Principal		
Interest		

g

c	1931	1932	1933	1934	1935	1936 6 months

Mt Ephraim

	1930	1931
School Debt as 7 June 30	8[illegible]000	80000
Funded Debt	1154[illegible]341	1177[illegible]369
Due state + county	—0—	—0—
Due local schools	17[illegible]869	70739
Miscellaneous Payable		
	[illegible]	[illegible]
1930 Census	7319	
Per capita debt	$1085	$1039
Assessed Valuation	[illegible]787807	[illegible]796887
Debt per dollar of assessed Valuation	(5.8%)	(5.4%)
Total Tax Levy	1[illegible]586	147[illegible]65
Tax rate per 100	(2.94)	(6.42)
No of acres + lots	3785	3809
Average tax bill	37.93	38.70
Tax collections (Current yr)	$[illegible]91303	$[illegible]706480
% of levy (Prior yrs)	(50%)	(39%)
	731[illegible]863	73036[illegible]98
Tax Title Liens Collections	478791	47794[illegible]
Total collection of taxes	33860[illegible]57	8[illegible]631[illegible]19
Tax Title Liens Foreclosed or acquired		
Defaults Principal		63.000
Interest		

1930	1931	1932	1933	1934	1935	1936 6 months	

	1930
School Debt as of June 30	43000
Funded Debt	690100
Due state + County	— 0 —
Due local schools	97750
Miscellaneous Payable	
	917350
1930 Census	7869
Per capita debt	158.70
Assessed Valuation	9931767
Debt per dollar of assessed valuation	12%
Total Tax Levy	546109.81
Tax rate per 100 -	(.480)
No. of acres + lots	
Acreage tax bill	695
Tax collections (Current yr)	476318.37
" " (No. of Levy)	50%
" " (Prior yrs)	143898.34
Tax Title Lien collections	27094
Total collection of taxes	518744.60
Tax Title Liens - Foreclosed or acquired	
Defaults: Principal	
Interest	

1930	1931	1932	1933	1934	1935	1936	
430,000	405,000	386,000	364,000	344,000	386,399.38		
690,100	634,350	[illegible]	[illegible]	[illegible]	562,044.43	*	
— 0 —	1,160,700	1,840,100	3,309,360	3,187,393.38	3,718,894.00	3528.00	
97,456	91,360	116,457.37	174,947.27	170,994.27	127,075.27	77,401.57	
217,356	1,451,180.01	1,449,792.71	1,379,532.88	1,307,911.39	1,447,308.12	*	
7869							
15470	15708	15882	19531	16672	18393		
931,762	999,389.77	958,777	890,174	913,530	884,773	839,973	
12%	13%	13%	15%	16%	16%		
584,109.81	577,411.55	470,705.75	465,987.89	480,396.19	437,773.10	461,269.67	
(4.80)	(4.76)	(4.38)	(4.61)	(4.17)	(4.95)	(5.49)	
					78,491	77,491	
695	665	607	593	619	557		
1,270,382.27	1,111,978.55	1,209,137.11	1,259,830.14	1,237,287.12	1,426,480.07	1189.00	
50%	50%	44%	34%	49%	33%	76%	
143,984.34	164,956.07	185,759.67	108,584.44	135,754.96	288,963.48	215,202.55	
437,494	110,980	77,188.67	153,634.82	78,693.57			
1,874,960.81	1,387,914.62	1,472,085.45	1,522,049.40	1,451,825.65	1,731,150	334,126.67	
				910,605	1,671,224.69	309,937	

* Figures Unavailable

Brigantine

	1930	19
Funded Debt	1609000.00	159
Due State & County	374103.67	447
Due local schools	16498.35	11
Miscellaneous payable		
	1999601.02	2053
1930 Census	357	
Per capita debt	$601.12	$5
Assessed Valuation	14,338,770	7778
Debt per dollar of assessed valuation	13%	
Total Tax Levy	362793.37	304
Tax rate per 100	(2.53)	
No. of acres & lots	8641	8
Coverage tax bill	41.71	
Tax collections (Current year)	97093.35	65
% of levy)	(25%)	
(Prior years)	6097.16	23
Tax Title Liens collected	1050.64	
Total collection of taxes	163577.77	112
Tax Title Liens Foreclosed or acquired		
Defaults: Principal		
Interest		

30	1931	1932	1933	1934	1935	1936	

Lodi (So Hackensack)

		1930	19
School debt as of	June 30	406647	340
Funded Debt		283719 80	297
Due State & County		13371 52	—
Due local schools		18551 71	40
Miscellaneous Payable		12762 73	4
		367721 73	361
1930 Census		17094	
Per capita debt		78.07	77
Assessed Valuation		10738453	77
Debt per dollar of assessed valuation		3.47	
Total Tax Levy		611988	56
Tax rate per 100		(5.67)	
No of acres & lots		7014	7
Garbage tax bill		3038	7
Tax collections (Current yr)		240026	223
% of levy		(39%)	13
(Prior years)		10553 92	19
Tax Title Liens collected		3924	11
Total collection of taxes		345956	38787
Tax Title Liens Foreclosed or pending			
Defaults General			
Interest			

	1931	1932	1933	1934	1935	1936

		19
School debt as of June 30		126
Funded Debt		75
Due State & county		—
Due local schools		75
Miscellaneous Payable		409
1930 Census		
Per capita debt		
Assessed Valuation		339
Debt per dollar of assessed Valuation		
Total Tax Levy		1
Tax rate per 100		
No. of acres & lots		
average tax bill		
Tax collections (Current yr)		1
% of Levy		
Prior yrs		1
Tax Title Liens collections		
Total collection of taxes		1
Tax Title Liens Foreclosed or acquired		
Defaults: Principal		
Interest		

1930	1931	1932	1933	1934	1935	1936	
124500	115500	111500	107500	103500	97500		
3757746	3150726	3276283	3197121	2899407	2782363	*	
—o—	—o—	76869	31563	—o—	—o—	—o—	
2366	2976	5186	6855	6017	5736	3101	
10943871	7955875	5128560	6236346	4551188	4865043	*	
7525	8740	9426	11461	8315	7878		
3928	3453	2671	3582	3577	3559	3592	
12%	14%	14%	17%	13%	12%		
2332867	1469965	1430613	1607432	1419213	1237770	1357826	
428	428	386	447	396	(354)	(378)	
13003	13185	13187	13191	13025	13605	13017	
3580	1114	1085	1219	1089	964		
2467060	1047716	887247	1350269	971650	895327	2056725	
(73%)	(71%)	(62%)	(67%)	(76%)	(71%)	(37%)	
1207613	1756613	1101068	1357380	1109897	1461056	795419	
2678992	1769103	1777211	1780685	1602574	1967470	1003917	
1855772	1711882	1119137	1789977	1568751	1379053	5756056	
		395098	759931	—o—	—o—	—o—	
						—o—	

* Figures unavailable

Lavallette

	1930	1931
School Debt as of June 30	$7000	$8500
Funded Debt	671500	583500
Due State & County	— 0 —	— 0 —
Due Local schools	5463.09	— 0 —
Miscellaneous Payable		34034.97
	673888.37	661690.00
1930 Census	787	
Per capita debt	$856.04	$841.94
Assessed Valuation	1787774	1306767
Debt per dollar of assessed valuation	37%	51%
Total tax levy	91704.42	83994.43
Tax rate per $100 -	(7.13)	(6.41)
No of acres & lots	1638	1805
Average tax bill	$55.98	$46.86
Total collections current (per cent of levy)	$65276.58	$65221.85
" " (Prior years)	(69%)	(78%)
Tax Title Liens collected	$1612.24	$5472.93
Total collections of Taxes	$307.07	$1513.36
	61991.17	64847.14
Tax Title Liens Foreclosed or acquired		
Defaults Principal		
Interest		

1930	1931	1932	1933	1934	1935	1936 6 months
47000	48500	45500	44000	42500	41000	39500
6716[illegible]78	5831[illegible]03	5646[illegible]73	5577[illegible]79	5479379	5246[illegible]58	505173[illegible]41
— o —	— o —	77857[illegible]3	46841[illegible]57	7799938	373230	—
[illegible]7[illegible]309	— o —	60[illegible]7[illegible]4	[illegible]07300	6[illegible]4863	[illegible]71383	698383
	3[illegible]03[illegible]97	3[illegible]03[illegible]97	3[illegible]03[illegible]97	3[illegible]03[illegible]97	3737884	28000
67388837	66869000	6799[illegible]197	68[illegible]74183	65337[illegible]7	61348153	57960724
787						
[illegible]3[illegible]804	[illegible]31948	[illegible]36618	[illegible]28934	[illegible]7657	[illegible]13757	
178[illegible]74	1306767	1366731	1336[illegible]30	129[illegible]051	170[illegible]416	1186546
52%	51%	50%	51%	51%	51%	
9170[illegible]42	8399[illegible]43	78[illegible]7189	97[illegible]9770	95[illegible]7081	76[illegible]3705	7045851
(7.13)	(6.41)	(5.74)	(6.85)	(7.46)	(6.37)	(5.93)
1638	1805	1717	1803	1809	1888	1888
[illegible]598	[illegible]686	64[illegible]2	[illegible]118	[illegible]791	[illegible]053	3732
[illegible]2[illegible]2[illegible]56	[illegible]4[illegible]2[illegible]85	3[illegible]4937[illegible]29	36[illegible]7[illegible]1	39[illegible]4366	3[illegible]62[illegible]491	1326[illegible]42
(59%)	(55%)	(42%)	(40%)	(41%)	(47%)	(17%)
[illegible]16[illegible]24	1[illegible]47[illegible]93	99[illegible]456	10832[illegible]8	13[illegible]4368	3[illegible]3235[illegible]0	770468
[illegible]30[illegible]07	[illegible]15136	188915	16607[illegible]	6[illegible]7[illegible]75	10003[illegible]4	1337533
6199117	6[illegible]87[illegible]14	[illegible]6781[illegible]0	49[illegible]73[illegible]53	[illegible]536[illegible]009	7795[illegible]195	34847[illegible]3
					3926637	4614078
			15[illegible]1640[illegible]7	36[illegible]78[illegible]5	[illegible]3[illegible]3[illegible]5047[illegible]0	17000 —

Monaghan

	1930	19
School debt as of June 30	32700	31
Funded Debt	138730	177
Due state & county	—	—
Due local schools	14103 75	14
Miscellaneous payable	337	
	187041 75	173
1930 Census		
Per capita debt	1465	
	127.67	11
Assessed Valuation	7663375	689
Debt per dollar of assessed valuation	2.4%	
Total Tax Levy	1731397	61
Tax rate per 100	6.77	
No. of alns & lots	7534	
Average tax bill	98.47	1
Tax collections (Current year)	2776571	37
" " (% of levy)	(45.2%)	(5
(Prior yrs)	178118.11	17
Tax Title Lien collections	43320	5
Total collection of taxes	2959661	55
Tax Title Liens - Foreclosed or acquired		
Defaults Principal		
Interest		

30	1931	1932	1933	1934	1935	1936	
00	31484	29600	28600	27600	26500		
3780	177992	177900	170740	177734	173485		
	— 6 —	— 0 —	— 0 —	— 0 —	— 0 —		
0375	14765	21187	23325	24009	26180	34[illegible]04	
327	327	327	327	327	327	—	
4181	173783	173657	191690	194347	196016		
67							
2767	11859	11856	13049	13266	13383		
75	68965	73870	70335	73700	80163 —	70703 —	
72%	75%	74%	76%	76%	74%		
5397	61[illegible]777	5[illegible]915	5[illegible]8618	56[illegible]777	53[illegible]588	47 35831	
677	801	677	675	697	1668)	(585)	
					5330	5330	
98[illegible]	1158	1036	1041	1054	1004		
[illegible]571	3[illegible]61147	3[illegible]6[illegible]40	1[illegible]81838	21[illegible]5039	19[illegible]716	8[illegible]3[illegible]57	
52%)	(52%)	106%	(33%)	(37%)	(36%)		
1811	17456	11[illegible]17	11[illegible]38	17[illegible]55	14[illegible]	80648	
3327	5[illegible]9419	2[illegible]	6845[illegible]	4677[illegible]	7[illegible]7[illegible]		
[illegible]761	[illegible]5[illegible]761	39[illegible]716	31[illegible]835	43153[illegible]	27[illegible]65	16[illegible]5200	
						1098138[illegible]	
						[illegible]50[illegible]	

* Figures unavailable

Avalon

	1930	1931
Funded Debt	806 453	807 889 86
Due State & County	— 0 —	30 479 14
Due Local Schools	— 0 —	9 821 67
Miscellaneous Payable		
	806 453	847 810 67
1930 Census	3.43	
Per capita debt	235 06	247 175
Assessed Valuation	3705 726	3634 603
Debt per dollar of assessed Valuation	22%	23%
Total Tax Levy	187 505 33	177 630 50
Tax rate per $100 -	(5.18)	(4.89)
No of acres & lots	19078	19305
Acreage Tax Bill	1506	917
Total collections (Current yr)	88 474 71	78 591 24
(% of levy)	(47%)	(44%)
(Current year)	21 1766	26 698 13
Tax Title Liens collected	1498 52	8655 40
Total collection of taxes	124 584 89	113 944 78
Tax Title Liens Foreclosed or acquired		
Defaults Principal		
Interest		

1930	1931	1932	1933	1934	1935	1936 6 months	
106,743,43	8,07,489,86	71,498,46	71,760,801	74,673,395	73,133,702	*	
— 0 —	30,479,14	70,997,46	97,419,97	78,712,11	81,661,05	74,605,68	
— 0 —	98,17	1,70,00	1,80,000	1,50,000	1500-	0	
		1,78,77	1,38,010	1,25,286	20,900,1	*	
106,743,43	84,781,06	79,506,69	81,863,08	83,270,000	83,536,49		
3,43							
1,35,56	1,71,75	1,30,68	1,38,560	1,94,4	1,35,68		
70,526	36,34,603	36,89,553	31,59,786	30,52,721	38,90,791	1,52,190	
22%	23%	22%	25%	27%	28%		
187,505,33	77,03,50	19,67,00	19,01,276	18,06,37,30	18,41,179	19,18,35	
(5.18)	(6.87)	(5.31)	(6.01)	(5.91)	(6.38)	(7.03)	
19078	1930	1930	20000	20000	20000	20000	
1706	917	1007	959	903	922	982	
17,74,183	76,59,174	76,99,53	63,27,814	68,67,789	69,11,147	7,90,28,59	
(4.7)	(6.77)	(6.07)	(5.5)	(38%)	(38%)		
7,71,74,1.1	7,46,79,813	1,91,74,2	2,17,75,53	3,43,15,77	1,80,76,13	10,26,709	
12,98,52	86,55,07	6,98,433	1,03,383	9,72,868	13,39,501		
12,58,489	11,39,478	10,31,460	9,41,917	11,11,173	10,08,01,10	39,29,568	
				43,53,363	1,77,879		
				381,51,133	79,03,45,000	Estimated	
					96,55,28	66,475	

	1930	19
School debt as per June 30	$509,900	498,6
Funded Debt	3,327,201	3,279,2
Due State & County	—0—	5,7
Due local schools	651,500	773,5
Miscellaneous Payable		
	1917,26,501	1,949,8
1930 Census	57,34	
Per capita debt	33.36	3
Assessed Valuation	$57,993,887	$57,31,7
Debt per dollar of assessed valuation	3.3%	3
Total Tax Levy	760,900.66	760,0
Tax rate per 100. =	(1.31)	(1
No of acres & lots	4967	49
Garage tax bill	52,50	
Total collections (current yr)	1294,57,72	108,7
(% of levy)	(50%)	(4
(Prior years)		
Tax Title Liens Collected	59,63,611	6,1
Total collection of taxes	38,786	1,7
	1924,97,192	187,7
Tax Title Liens Foreclosed or acquired		
Defaults Principal		
Interest		

1930	1931	1932	1933	1934	1935	1936 6 months
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

	1930	
School Debt as of June 30	701000	19
Funded Debt	642127577	31
Due State + County	—0—	
Due Local schools	33500	
Miscellaneous Payable		
	675630770	70
1930 Census	5117	
Per capita Debt	32746	
Assessed Valuation:	4017836	386
Debt per dollar of assessed Valuation	42%	
Total Tax Levy	37586	73
Tax rate per 100	(.13)	
No. of acres + lots.	4454	
Average tax bill	32746	
Total collections (Current yr.	9293	8
% of Levy)	24.7	
Prior years	81548	7
Tax Title Liens collected	15704	
Total collection of taxes	103205	17
Tax Title Liens Foreclosed or acquired		
Defaults Principal		
Interest		

930	1931	1932	1933	1934	1935	1936 6 months
1000	197500	196000	184500	174500	164500	
1275777	3815777	2541081	1977457	998 77477	871 77579	X
-0-	62218 01	98 84470	86 85134	70 84197	45 31033	36 31449
33500	57 41400	71 03900	64 77900	54 15400	51 06214	17 06214
			91 10[illegible]	3[illegible]	16 73387	
16307770	4078	1687	0877	8	49 80677	1306 49 53
1344	3221	1				
1117						
32746	33270	31661	26234	25534	21165	
1836	3869669	3607489	2698402	2111795	1704014	2027979 -
62%	62%	58%	55%	62%	58%	
1586	73622	72478	198752	180781	175089	173595 -
(5.13)	(5.86)	(7.02)	(7.36)	(8.46)	(8.37)	(8.56)
4254	4332	4332	4332	4320	4320	4320
5244	5350	5593	4507	4136	4054	4018
8953	8709	7496	5133	3697	3704	2794
20%	37%	31%	28%	35%	47%	25%
1548	77703	56023	59230	61331	67768	26519
4044	2424	1434	1592	1077	737	385
3105	17438	15663	17023	18477	18310	10788

1930

330 77577 1 1 1

INDEX.

Subject Index.

	Page
I. Basis of the jurisdiction of the Supreme Court of the United States	1
II. Statutory provisions sustaining jurisdiction	2
III. Statute of the State of New Jersey, the validity of which is involved	2
IV. Date of final decree and date of application for appeal	8
V. Nature of the case and of the rulings of the specially constituted United States District Court	9
VI. Cases believed to sustain the jurisdiction of the Supreme Court of the United States	16
Cases holding that the complaint does not state a case for a three-judge court, but should be remitted	16
Cases holding that a single-judge district court would not have to consider the constitutionality of the stays	20
Cases holding that the stays are discretionary and constitutional	22
Cases holding that plaintiff is not entitled to injunction or declaratory judgment against the acceptance of bonds for taxes	23
Cases holding that plaintiff's rights on its bonds are governed by the Tax Act of 1918 rather than the Executions Act	25
Cases holding that plaintiff's procedural rights on its bonds were lost by merger of its rights on its original obligation in its judgment	26
Cases holding that appeal is the proper remedy	27

Table of Cases and Statutes Cited.

Cases:

Page

Ashwander v. *Tennessee Valley Authority*, 297 U. S. 288, 325 (1936) 20, 21, 24

Automotive Equipment Co. v. *Trico Products Corp.*, 11 Fed. Supp. 292 (U. S. D. C., W. D. N. Y., 1935) 21

Axton v. *Goodman*, 205 Ky. 382, 265 S. W. 806, 807 (1924) 20

Banning v. *Marsh*, 124 Nebr. 207, 245 N. W. 775, 776 (1932) 20

Barnes v. *Drake*, 31 N. J. Law 317 (Supr. 1865) 26

Electric Bond and Share Co. v. *Commission*, 303 U. S. 419, 443 (1938) 20, 24

Film Transport Co. v. *Michigan Publ. Util. Comm.*, 17 F. (2d) 957 (U. S. D. C., E. D. Mich., 1927) 16

Friedland v. *Isquith*, 106 N. J. Eq. 344, 349, 150 Atl. 840 (Ch. 1930) 26

Hi-Ball Transit Co. v. *Railroad Comm. of Texas*, 27 F. (2d) 425 (U. S. D. C., N. D. Tex., 1928) 16

Hourigan v. *Township of North Bergen*, 113 N. J. Law 143, 172 Atl. 193, concurring opinion 172 Atl. 785 (E. & A., 1934) 10, 23

Morrison v. *Fall*, 290 Fed. 306 (App. D. C. 1923), affirmed sub. nom. *Morrison* v. *Work*, 266 U. S. 481 (1925) 24

Matthews v. *Rodgers*, 248 U. S. 521 (1932) 27

Pleasant v. *Missouri-Kansas-Texas Ry.*, 66 F. (2d) 842, 843-44 (C. C. A., 10th, 1933), cert. den., 291 U. S. 659 (1934) 19

Rogers v. *Penobscot Mining Co.*, 154 Fed. 606, 610 (C. C. A., 8th, 1907) 19

Rees v. *City of Watertown*, 19 Wall. 107, 124 (1873) 21

Salem Trust Co. v. *Manufacturers' Finance Co.*, 262 U. S. 182, 190 (1924) 19

Schuler v. *Israel*, 120 U. S. 506, 509 (1887) 26

Smith v. *Wilson*, 273 U. S. 388, 391 (1927) 16

Sovereign Camp, Woodmen of the World v. *Wilentz et als.*, 23 Fed. Supp. 23 (U. S. D. C., D. N. J., 1938, this case below) 15

Page

Sperry-Hutchinson Co. v. *Kuhn*, 212 Fed. 555, 557, (U. S. D. C., E. D. Mich., 1912) 24
Stratton v. *St. Louis S. W. Ry. Co.*, 284 U. S. 530 (1932) 27
Thompson v. *Allen County*, 115 U. S. 550 (1885) 21
United States ex rel. Christmas v. *Asbury Park*, 78 F. (2d) 1003 (C. C. A., 3d, 1935), cert. den., 296 U. S. 624 (1935) 21, 22
Vanderpoll v. *Borough of Mt. Ephraim*, 111 N. J. Law 423, 424, 168 Atl. 575 (E. & A., 1933) 23
Walkley v. *City of Muscatine*, 6 Wall. 481, 482 (1867) 21
Wright v. *Vinton Branch Bank*, 300 U. S. 440, 460-61 (1937) 23
Zenie Bros. v. *Miskend*, 10 Fed. Supp. 779, 782 (U. S. D. C., S. D. N. Y., 1935) 21

Statutes:

P. L. New Jersey, 1881, C. 77, Sec. 1 (Executions Act) 25
P. L. New Jersey, 1903 (2d Sp. Sess.), C. 1, Sec. 237 (Executions Act) 25
P. L. New Jersey, 1910, C. 242, Sec. 1 26
P. L. New Jersey, 1918, C. 236, Sec. 101 26
P. L. New Jersey, 1918, C. 236, Sec. 505 (Tax Act of 1918) 25
P. L. New Jersey, 1928, C. 123, Sec. 1 25
P. L. New Jersey, 1931, C. 340, as amended and supplemented, generally 2
Revised Statutes New Jersey (1937):
1: 1-10 3
52: 14-32 3
52: 24-19.1 3
52: 27-1 to 65 3
52: 27-26 8
52: 27-32.1 3
52: 27-32.2 5
52: 27-33 4
52: 27-33.3 8
52: 27-62 7

Page

36 Stat. 1162 (Act of March 3, 1911, C. 231, Sec. 266) 2
37 Stat. 1013 (Act of March 4, 1913, C. 160) 2
43 Stat. 938 (Act of February 13, 1925, C. 229, Sec. 1) 2
43 Stat. 938 (Act of February 13, 1925, C. 229, Sec. 1, Sub-Sec. 3) 2
United States Constitution, Amendment 10 14
United States Constitution, Amendment 11 14
United States Judicial Code, Sec. 238(3) 2
Sec. 266 ..... 2, 13, 17, 18
Sec. 274d 20

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 448

DAVID T. WILENTZ, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY; J. H. THAYER MARTIN, STATE TAX COMMISSIONER OF THE STATE OF NEW JERSEY, AND WALTER R. DARBY, COMMISSIONER OF MUNICIPAL ACCOUNTS OF THE STATE OF NEW JERSEY, AS AND CONSTITUTING THE MUNICIPAL FINANCE COMMISSION OF THE STATE OF NEW JERSEY; EARL KIRCHER, CONRAD WEBER AND WILLIAM G. HIRSCH, MEMBERS OF THE BOARD OF ASSESSORS OF THE BOROUGH OF RUNNEMEDE, NEW JERSEY, AND ALBERT W. SPENCER, TAX COLLECTOR OF THE BOROUGH OF RUNNEMEDE, NEW JERSEY,

Appellants,

vs.

SOVEREIGN CAMP, WOODMEN OF THE WORLD,

Respondent.

STATEMENT UNDER RULE 12 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

(Filed August 29, 1938.)

I. Basis of Jurisdiction of the Supreme Court of the United States.

The basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal

to review the decree in question is that said appeal is from a final decree of a specially-constituted three-judge United States District Court, convened pursuant to Section 266 of the Judicial Code of the United States. There is drawn in question in this suit the validity of a statute of the State of New Jersey on the ground of its being repugnant to the Constitution of the United States, and the enforcement and execution of said statute by an administrative commission of the State of New Jersey, viz., the Municipal Finance Commission of the State of New Jersey. The said final decree is a decision against the validity of the said statute and of its enforcement and execution by the said Municipal Finance Commission.

II. Statutory Provisions Sustaining Jurisdiction.

The statutory provisions which sustain the jurisdiction of the Supreme Court of the United States are Section 266 of the Judicial Code of the United States, being Chapter 231, Section 266, of the Act of March 3, 1911 (36 Stat. 1162), as amended by Chapter 160 of the Act of March 4, 1913 (37 Stat. 1013), as amended by Chapter 229, Section 1, of the Act of February 13, 1925 (43 Stat. 938), and Section 238(3) of the Judicial Code of the United States, being Subsection 3 of Section 1 of Chapter 229 of the Act of February 13, 1925 (43 Stat. 938), entitled "Section 238".

III. Statute of the State of New Jersey, the Validity of Which is Involved.

The statute of the State of New Jersey, the validity of sections of which is involved, is "An Act Concerning Municipal Finances", being Chapter 340 of the Pamphlet Laws of 1931 of the State of New Jersey, as from time to time amended and supplemented. Said statute, as amended and supplemented, may be found in the official edition of "The

Revised Statutes of New Jersey (1937)", being Title 52, Chapter 27, Sections 1 to 66, both inclusive (52:27-1 through 66); Title 52, Chapter 24, Section 19.1 (52:24-19.1); Title 52, Chapter 14, Section 32 (52:14-32); and Title 1, Chapter 1, Section 10 (1:1-10). The pertinent portions of said statute, being those the validity of which was assailed by the complaint below and held void in the opinion, findings of fact and conclusions of law, and final decree, are here set out verbatim as follows:

"Whenever the commission shall function in any municipality and so long as it shall continue so to do, no judgment, decree, levy or execution against the municipality or the property thereof for the recovery of the amount due on any bonds, notes or other obligations of the municipality, in the payment of which the municipality has defaulted, shall be enforced until otherwise specially ordered by the supreme court or a justice thereof in an appropriate proceeding for such purpose, after notice to the commission, and the enforcement of any such judgment, decree, levy or execution shall be stayed until otherwise specially ordered as aforesaid." (Revised Statutes of New Jersey (1937) 52:27-32.1.)

"Whenever the commission shall function in any municipality and so long as it shall continue so to do, no action or proceeding of any kind, either direct or ancillary, by way of mandamus or otherwise, shall be brought against such municipality or any public officers for the assessment, levy or collection of taxes by or for such municipality and any and all actions or proceedings therefor shall be and they hereby are stayed; except that first, the supreme court or a justice thereof, after notice to the commission, may authorize one or more creditors of such municipality to bring and maintain an action or proceeding therefor in the supreme court, which shall be brought for the benefit of themselves and all other creditors of such municipality and in which all other creditors of such municipality shall have the right to intervene and assert their claim and

in which all other creditors of such municipality may, and the commission shall, be made parties in such manner and upon such notice as the supreme court shall approve; and except that, second, the commission may bring and maintain an action or actions by way of mandamus or by any other appropriate proceeding or proceedings for the assessment, levy or collection of taxes by such municipality for the payment of principal or interest of the indebtedness of the municipality found to be outstanding as provided in section 52:27-14 of this title.

"Without limiting its power otherwise to direct by mandamus the assessment, levy or collection of taxes, the supreme court in any such proceeding may, to the extent which it shall deem just and equitable, afford to the holders collectively of any due and unpaid claims against a municipality any remedy which might be afforded under any other law to any individual creditor in any mandamus proceeding for the assessment, levy or collection of taxes, to the same extent as if there had been an entry of judgment in their favor, issuance of execution and return thereof unsatisfied, service thereof upon public officials and performance of any and all other conditions precedent to the affording of such relief by mandamus under such other law; provided, that the court be first satisfied from proof submitted by affidavit or otherwise that the claims for the enforcement of which such remedy is sought are claims upon which a judgment could be obtained." (Revised Statutes of New Jersey (1937) 52:27-33.)

"Whenever the commission shall function in any municipality and so long as it shall continue to do so, no action or proceeding at law or in equity shall be brought or prosecuted, the purpose of which is to affect the disposition of property or funds owned or controlled by the municipality, except as provided in this chapter.

"If any such municipality has in its possession or under its control, or there is in the possession or under the control of the commission, any property or funds of such municipality which are or may be available for the payment of interest or principal upon any of the debts of such municipality (over and above the payment of

the current operating expenses of the municipality and the maintenance of a reasonable working capital), then such municipality in its discretion may apply, or if directed by the commission shall apply, to the supreme court to determine the application and distribution of such property or funds to and among the creditors of the municipality, and in any such case the supreme court in its discretion may permit an application for relief of the same character to be made by any creditor of the municipality. In any such proceeding all creditors of the municipality shall be made parties thereto in such manner and upon such notice by publication or otherwise as the supreme court shall approve, and any creditor may appear therein and assert his rights to receive all or any part of such property or funds.

"In case any such proceeding shall be instituted, the supreme court may direct the municipality to make no payments from any of such moneys so available until the determination of the proceeding or until permitted by the supreme court. Unless and until such a direction shall be made, payments may be made by such municipality on account of principal and interest as the municipality may determine and as may be approved by the commission." (Revised Statutes of New Jersey (1937) 52:27-33.2.)

"Whenever the commission shall function in a municipality having a school district coterminous therewith which is governed by the provisions of chapter 7 of the title Education (§ 18:7-1, *et seq.*):

a. No judgment, decree, levy or execution against such school district or the property thereof for the recovery of the amount due on any bonds, notes or other obligations of the school district, in the payment of which such school district has defaulted shall be enforced until otherwise specially ordered by the supreme court or a justice thereof in an appropriate proceeding for such purpose, after notice to the commission, and the enforcement of any such judgment, decree, levy or execution shall be and it hereby is stayed until otherwise specially ordered as aforesaid;

b. No action or proceeding of any kind either direct or ancillary, by way of mandamus or otherwise, shall be brought against such school district, municipality, or any public officers for the assessment, levy or collection of taxes for such school district and any and all actions or proceedings therefor shall be and they hereby are stayed; except that first, the supreme court or a justice thereof, after notice to the commission may authorize one or more creditors of such school district to bring and maintain an action or proceeding therefor in the supreme court, which shall be brought for the benefit of themselves and all other creditors of such school district and in which all other creditors of such school district shall have the right to intervene and assert their claim and in which all other creditors of such school district may, and such commission shall, be made parties in such manner and upon such notice as the supreme court shall approve; and except that, second, the commission may bring and maintain an action or actions by way of mandamus or by any other appropriate proceeding or proceedings for the assessment, levy or collection of taxes for such school district for the payment of principal or interest of the indebtedness of the school district found to be outstanding as provided in section 52:27-46 of this title; without limiting its power otherwise to direct by mandamus the assessment, levy or collection of taxes, the supreme court in any such proceeding may, to the extent which it shall deem just and equitable afford to the holders collectively of any due and unpaid claims against a school district any remedy which might be afforded under any other law to any individual creditor in any mandamus proceeding for the assessment, levy or collection of taxes, to the same extent as if there had been an entry of judgment in their favor, issuance of execution and return thereof unsatisfied, service thereof upon public officials and performance of any and all other conditions precedent to the affording of such relief by mandamus under such other law; provided, that the court be first satisfied from proof submitted by affidavit or otherwise that the claims for the enforcement of which such remedy is

sought are claims upon which a judgment could be obtained;

c. No action or proceeding at law or in equity shall be brought or prosecuted, the purpose of which is to affect the disposition of property or funds owned or controlled by the school district, except as herein provided; if any such school district has in its possession or under its control, or there is in the possession or under the control of the commission, any property or funds of such school district which are or may be available for the payment of interest or principal upon any of the debts of such school district (over and above the payment of the current operating expenses of the school district and the maintenance of a reasonable working capital), then such school district in its discretion may apply, or if directed by the commission shall apply, to the supreme court to determine the application and distribution of such property or funds to and among the creditors of the school district, and in any such case the supreme court in its discretion may permit an application for relief of the same character to be made by any creditor of the school district; in any such proceeding all creditors of the school district shall be made parties thereto in such manner and upon such notice by publication or otherwise as the supreme court shall approve, and any creditor may appear therein and assert his rights to receive all or any part of such property or funds; in case any such proceeding shall be instituted, the supreme court may direct the municipality to make no payments from any of such moneys so available until the determination of the proceeding or until permitted by the supreme court; unless and until such a direction shall be made, payments may be made by such municipality on account of principal and interest as the municipality may determine and as may be approved by the municipal finance commission;

d. Upon the application of any creditor made upon notice to the school district and the commission, the supreme court may vacate, modify or restrict any statutory stay contained in this statute." (Revised Statutes of New Jersey (1937) 52:27-62.)

"The governing body of any municipality in which the commission is functioning may compromise and adjust the whole or any part of any special assessments or taxes delinquent to the municipality, but nothing in this section shall be construed to impair or affect in any way the existing rights and remedies of any holder of a certificate of tax sale, representing any tax title or titles to lands in such municipality sold on account of delinquent taxes or delinquent assessments, or both.

"No claims of the municipality for taxes or assessments, and interest thereon, in excess of five hundred dollars, shall be compromised without the assent in writing of the commission.

"All moneys received by the municipality by compromise or adjustment of taxes or special assessments shall, if the commision so provide, be paid only to the account of the reserve fund referred to in section 52:27-25 of this title." (Revised Statutes of New Jersey (1937) 52:27-26.)

Your petitioners would like to call the attention of this Honorable Court to the provisions of a section of the said Act not cited below by complainants or the court.

"Upon the application of any creditor made upon notice to the municipality and the commission, the supreme court may vacate, modify or restrict any statutory stay contained in this article." (Revised Statutes of New Jersey (1937) 52:27-33.3.)

Nor was the provision for relaxation of stays in school districts (52:27-62d, *supra*) cited below by complainants or court.

IV. Date of Final Decree and Date of Application for Appeal.

The final decree sought to be reversed was entered on June 6, 1938. The application for appeal is presented on August 29, 1938.

V. Nature of the Case and of the Rulings of the Specially Constituted United States District Court.

The Borough of Runnemede, a municipality of the State of New Jersey, having within it a school district coterminous with it, in 1934 was forced by the pressure of economic circumstances to default in payment of interest upon and principal of its bonded debt. Pursuant to the provisions of the New Jersey "Act Concerning Municipal Finances", the Borough in 1934 applied to the Supreme Court of New Jersey for an order adjudging it unable to meet its obligations, and ordering the Municipal Finance Commission of the State of New Jersey to function within it. The order was made and granted, upon hearing, by Justice Lloyd of the New Jersey Supreme Court.

When a municipality in New Jersey is subject to the jurisdiction of the Municipal Finance Commission, the statutes of New Jersey provide that such jurisdiction shall be deemed to cover also coterminous school districts. The acts provide in substance for stays of creditors' remedies when municipalities and school districts are subject to the jurisdiction of the Municipal Finance Commission. These stays provide for a creditors' action for the benefit of all creditors, and that the stay may be relaxed or modified upon application by any creditor.

The complainant in the case below was owner and holder of a final judgment, obtained in the United States District Court for the District of New Jersey, against the Board of Education of the Borough of Runnemede, based upon municipal bonds dated June 1, 1930.

In June, 1936, the complainant brought this suit. The complaint contained four counts. In Counts 1, 3 and 4 all of the defendants were made parties. In Count 2, only the Municipal Finance Commission was made a party. After alleging the above matters in substance, Count 1 alleged

that a demand had been made for the payment of the judgment, execution issued and returned *nulla bona* and a certified copy thereof served upon the assessors of the taxing districts in which the school district is located, and that such assessors had failed in the duty enjoined upon them by law to assess a tax to meet such execution, basing their refusal upon the stays made effective by the Act Concerning Municipal Finances when the Municipal Finance Commission has been given jurisdiction over the taxing district. It then alleged that the Act Concerning Municipal Finances containing such stays was enacted after the issuance of the bonds represented by plaintiff's judgment and that such stays have been held valid by the Court of Errors and Appeals of the State of New Jersey in the case of *Hourigan* v. *Township of North Bergen*, 113 N. J. Law 143, 172 Atl. 193, concurring opinion 172 Atl. 785 (N. J. Err. and App. 1934). It alleged the stays to be unconstitutional as applied to plaintiff's bonds. The count then charged that the Municipal Finance Commission had certified to the Borough Council of the Borough of Runnemede a budget which contained no provision for the levy and collection of a special tax to meet plaintiff's judgment, and had approved a budget for the Board of Education which contained no such provision, and that the municipal officers would adopt and put into force budgets which would not include such provision. It alleged that the Municipal Finance Commission had no affirmative power to levy taxes, had failed and neglected to exercise diligently the limited powers granted to it in the interests of holders of the bonds of the borough and school district, had been lax and dilatory, and had encouraged the borough and school district to disregard the demands for payment of any amounts to bondholders.

The count alleged that plaintiff had filed a petition for a writ of mandamus, in the United States District Court for

the District of New Jersey, to compel the assessment of taxes for the payment of its judgment, and that proofs had been taken on said petition but charged that the matter would not be decided for some time.

It then alleged that if the Borough Council and Board of Education of the borough should adopt and put into force and effect budgets which made no provision for plaintiff's judgment prior to a final determination of the application for a writ of mandamus, the plaintiff would suffer irreparable injury and damage. The count closes with the allegation that plaintiff had no remedy at law.

The prayer for relief was that the Municipal Finance Commission be enjoined from functioning in the school district; that the court adjudge the stay provisions of the Act Concerning Municipal Finances unconstitutional and void; that the local Board of Assessors and Tax Collector be enjoined from assessing taxes for 1936 without including the amount of plaintiff's judgment, and that the court declare that the plaintiff's rights to compel a tax levy were governed solely by the New Jersey Executions Act.

Count 2 substantially re-alleged the allegations of Count 1, and added that plaintiff owned additional bonds of the same issue as those on which the judgment was based, that as a result of the stay provisions of the Act Concerning Municipal Finances, a cloud of unenforceability had been cast upon these bonds, and that the school district and board of education would make no payments thereon as principal and interest might become due, so that the plaintiff would be forced to bring a multiplicity of suits. In the prayer of Count 2 only the Municipal Finance Commission was made defendant.

Count 3 substantially re-alleged the allegations of Count 1, and so much of Count 2 as alleged the ownership of bonds in addition to those on which the judgment was based. It

added the statement that plaintiff's judgment and bonds were payable in lawful money of the United States only, that at the time of the issuance of the bonds it was the law of the State of New Jersey that taxes should be paid in lawful money only, and that, pursuant to the Act Concerning Municipal Finances, the governing body of a municipality over which the Municipal Finance Commission has jurisdiction was empowered to compromise taxes provided that no claim for more than $500 shall be compromised without the consent of the Commission. It further alleged that in two instances the Municipal Finance Commission had consented to such compromises with respect to the Borough of Runnemede. Plaintiff alleged that it owned no property in the Borough of Runnemede, and that the compromise was illegal because it gave a preference to the holders of bonds accepted in payment of taxes.

The prayer for relief was that the Municipal Finance Commission be enjoined from assenting to such compromises, that the tax collector be enjoined from consummating the same, and that the court declare unconstitutional the provisions of the Act Concerning Municipal Finances authorizing such compromises.

Count 4 substantially re-alleged the allegations of Count 1, and the allegations of Count 2 with respect to the ownership of bonds in addition to those upon which the plaintiff's judgment is based, and added that an actual controversy existed between plaintiff and defendant, the Municipal Finance Commission, as to the constitutionality of the stay provisions.

It repeated the prayers for relief against the functioning of the Commission in the municipality and for a declaration as to the unconstitutionality of the stay provisions, and added a prayer for an injunction against the enforcement and execution of the statutes by the Municipal Finance Commission.

The Commission's answer to Count I admitted the description of the parties, the nature of the claim and the amount, Runnemede's general default and the inception of the Commission's functioning in the borough and school district. It admitted the existence of the Act, as passed after the bonds were issued (but pointed out that the law permitted a creditor to ask that any stay be vacated, modified or restricted). It admitted recovery of the judgment, and that payment had been asked, but not that execution had been served on the assessors and collector. It admitted that no special levy was included in the borough budget, but alleged that the borough had no such duty, that the school budget had been adopted before bringing the suit, tax bills made out and paid, and that to direct a levy would result in utter confusion.

Making the same disposition of repeated allegations, the Commission admitted as to Count II that plaintiff held bonds not reduced to judgment. As to Count III, it admitted that plaintiff's bonds and judgment were payable in lawful money of the United States, and that when the bonds were issued New Jersey law provided that taxes should be so paid, but alleged that at that time the compromise of taxes due was permitted by law. It admitted that the Commission had, some time before, approved acceptance of bonds for taxes, but pointed out that this practice was discontinued some six months before the bill was filed, save for two transactions actually then pending, and that the resolution for discontinuance made this a permanent policy of the Commission. Other matters were denied.

By way of separate defenses in point of law arising upon the face of the bill, the Commission alleged, *inter alia*, that no cause for equitable relief was made out, that the remedy at law was adequate. It further alleged that the court was without jurisdiction to issue an injunction, under Section 266 of the Judicial Code, because the suit was not brought

to restrain the operation of a State statute, or the actions or orders of State officers or a board or commission in enforcing it. It alleged that the statutory court was without jurisdiction to issue an injunction against the *local* officials to restrain their collecting taxes without making provision for plaintiff's judgment. It alleged that the court was without jurisdiction of the bill of complaint because the complaint was in fact a suit against a State, within the ban of the 11th Amendment of the Federal Constitution, and that any injunction, if issued, would exceed the powers of the court by interfering with the internal and local government and affairs of the State of New Jersey, in derogation of the 10th Amendment of the Federal Constitution.

The answer of the local officials was virtually the same. They also alleged that the particular remedies, if any, attached to plaintiff's bonds, had been lost by merger of any cause of action on the bonds in the judgment, that the judgment had been recovered after passage of the Act, and that consequently no impairment of contract within the Federal Constitution could be claimed to exist.

The contention of the defendants that the statutory court below was completely without jurisdiction of the suit, since the State officers and the enforcement of a State statute by them was at most only colourably involved, is thus the primary question for determination. Over and above that, however, the contention of the defendants was that even the single-judge district court to which the case must be remitted would not be called upon to issue an injunction or declaratory judgment. The principal issues in the suit became: (a) the alleged unconstitutionality of the Act Concerning Municipal Finances; (b) the alleged unconstitutionality of the acceptance by the borough of bonds in payment of taxes; (c) the seeking of a determination that the plaintiff's right as judgment creditor were governed by the old New Jersey Executions Act rather than the Tax Act of 1918.

After adjournment from time to time on terms, without the granting of an interlocutory injunction, the matter came on for hearing October 29, 1936. Evidence was taken; that for plaintiff was directed solely to its claim that the value of its bonds not reduced to judgment had been lessened by the mere existence of the Act. On March 21, 1938, Judge Avis filed for the Court an opinion which is adequately summed up in the findings of fact and conclusions of law. The opinion is reported at 23 Federal Supplement 23, and is attached.

The findings were that the municipality was in default and that the Municipal Finance Commission, pursuant to an order of the Supreme Court of New Jersey, was functioning in it and its school district; that plaintiff had taken judgment on its bonds in default; that no taxes had been levied to pay the judgment, because of the pending mandamus; "that one reason for said failure and omission was because the Municipal Finance Commission was functioning in the municipality". It was also found that there was no sufficient evidence of a cloud of unenforceability, or great depreciation of the bonds because of the Act.

The court below concluded on Count I that it had jurisdiction; that the Municipal Finance Commission was a necessary party to all counts; that the defense of merger was unavailing; that the stay provisions were unconstitutional "in so far as they affect the right of the complainant to enforce its judgment obtained in and entered in this Court"; that the Execution Act and School Law, rather than the Tax Act of 1918, controlled the plaintiff's remedy; and that it would not enjoin the borough from collecting taxes without providing for plaintiff's judgment. The court concluded under Count III to enjoin defendants from making settlement for taxes "by any medium except in accordance with the laws of New Jersey". As to Count IV it found an

"actual controversy" and granted relief applicable when judgment should be obtained on bonds not yet sued on.

The final decree specifically embodied these findings and conclusions, enjoined the defendant Commission from functioning in the municipality "to the extent that such functioning may be inconsistent with the right of the complainant to enforce its execution in the manner herein stated". It held the Acts unconstitutional "in so far as they affect the right of the complainant to enforce its judgment", but denied an injunction against levying taxes not including the judgment. It decreed that the Execution Act applied. The decree restrained the defendants from "making settlement for taxes by any medium except in accordance with the laws of the State of New Jersey". Finally it decreed the stay provisions unconstitutional in so far as they might affect future recovery on other bonds.

VI. Cases Believed to Sustain the Jurisdiction of the Supreme Court of the United States.

Cases holding that the complaint does not state a case for a three-judge court, but should be remitted:

(a) As to Counts 1, 2 and 4 of the complaint:

In Counts 1, 2 and 4 of the complaint both the Commission and the local taxing officers were made parties defendant. The act sought to be enjoined is the "functioning" of the Commission within the municipality.

Where a three-judge district court convenes upon a case in which it has no jurisdiction, it is bound to remit it to a single district judge for trial. This is particularly true where, as here, no interlocutory injunction is insisted upon or granted.

Smith v. *Wilson*, 273 U. S. 388, at 391 (1927);

Film Transport Co. v. *Mich. Publ. Utility Comm.*, 17 F. (2d) 957 (U. S. D. C., E. D. Mich., 1927);

Hi-Ball Transit Co. v. *Railroad Comm. of Texas*, 27 F. (2d) 425 (U. S. D. C., N. D. Tex., 1928).

Section 266 of the Judicial Code provides that an interlocutory injunction may be issued to restrain the enforcement of a State statute and the officers enforcing it, when unconstitutionality is the ground alleged, only when heard before a three-judge court. The requirement as to the presence of three judges applies to the final hearing as well. The plaintiff in such a suit, then, must be barred from its usual forum because it seeks (a) an interlocutory injunction (b) against the enforcement of a State statute (c) which will control officers (d) on the ground of unconstitutionality.

Plaintiff's basic claim of unconstitutionality is the stay provisions of the Act Concerning Municipal Finances. These stay provisions provide that as long as the Commission functions in a municipality execution is stayed unless otherwise ordered by the State Supreme Court; that mandamus is stayed except that the State Supreme Court may authorize a creditors' action in mandamus for the benefit of all creditors, or that the Commission may bring such an action; and that a proceeding may be brought for distribution of tax collections on hand in reserves, in which case the State Supreme Court may order that no disbursement be made pending determination of the application. The law also provides that any creditor may apply to the Supreme Court to relax any of these stays. It is the plaintiff's claim that the stays impair the obligation entered into by the municipality when it sold the bonds at a time prior to the enactment of the law in question.

The only State officers involved are the Municipal Finance Commission. They do not enforce the stay, or order it into being. If they are enjoined from enforcing the stays, the injunction is useless, for they cannot relax them.

There is no virtue in the argument that an injunction is asked against the Commission's *functioning* in the municipality rather than its enforcing the stays. The stay lasts as long as the appointment of the Commission for the

municipality continues unrevoked, and if a hypothetical injunction were issued barring the Commission from performing any act in the municipality, the stay would nonetheless continue. It is completely divorced from positive acts of the Commission.

If the plaintiff were right in its contention that an injunction against the Commission's functioning in the municipality would result in the stay *ipso facto* falling, that would still give no basis for an injunction. All the acts of the Commission in the municipality are included in its functioning under the plaintiff's argument. But may the Commission be stayed from its many undisputedly constitutional activities simply to destroy the stay which the Commission itself does not enforce or bring into being?

The very decree below illustrates the truth of petitioners' argument. It enjoins the "Municipal Finance Commission from functioning in the Borough of Runnemede, New Jersey, to the extent that such functioning may be inconsistent with the right of the complainant to enforce its execution in the manner herein stated, but without prejudice to any of the powers or duties of the Municipal Finance Commission under the Municipal Finance Commission Act except as the stays therein contained affect the right of the complainant to enforce its judgment". No specific act of enforcement of a State statute by State officers (the Commission) is named. Yet that is the *sine qua non* of jurisdiction of a three-judge court under Judicial Code, Section 266.

(b) As to Count 3 of the complaint:

Count 3 of the complaint, directed against the approval by the Commission of acceptance of bonds in settlement of taxes where the deal in question involves more than $500 is the only count directly involving a positive act by the Commission.

The Commission ceased the practice, save for a few minor prior commitments, in October, 1935, 6 months before the complaint was filed.

Any action which the Municipal Finance Commission could take would be wholly secondary—a matter of approving by an "assent in writing" a settlement made by local officials. The sole reason for joining the Commission in this count is to gain a colourable joinder in order to seek a three-judge district court. This is even more obvious when we see that the plaintiff did not join as a defendant the body which makes such settlements, the Borough Council.

It is settled that a mere nominal joinder of State-officials as defendants in a case where the substantial relief really sought is an injunction against local officials does not require the convening of a three-judge court.

Pleasant v. *Missouri-Kansas-Texas Ry.*, 66 F. (2d) 842, at 843-44 (C. C. A. 10th, 1933), cert. den. 291 U. S. 659 (1934).

An exact parallel is demonstrated in the cases arising on colourable joinder of parties to secure State or Federal jurisdiction through their citizenship. In such cases the colourable joinder of unnecessary parties is again rejected as insufficient.

Rogers v. *Penobscot Mining Co.*, 154 Fed. 606, at 610 (C. C. A. 8th, 1907), and cases there cited.

Salem Trust Co. v. *Manufacturers' Finance Co.*, 262 U. S. 182, at 190 (1924).

If plaintiff's demand for relief on this issue were in good faith, it would seek an injunction in district court against the tax collector, who *accepts* such payment of taxes, or against the local governing body, which under the Act Concerning Municipal Finances itself is the only body which *makes* them. If plaintiff's contention as to such compro-

mises is correct, an injunction against the responsible parties in a one-judge district court would serve its every purpose far more efficiently than the present colourable joinder.

Cases holding that a single-judge district court would not have to consider the constitutionality of the stays:

The plaintiff's case is based upon a demand for an injunction and a demand for a declaratory judgment. As has been pointed out, an injunction against the Commission does not lie because the Commission does not enforce or relax the stays.

A declaratory judgment against the Commission cannot be issued for the same reason. The Commission did not assert against the plaintiff that the stays were constitutional, nor did it enforce them against plaintiff. The Federal Declaratory Judgment Act extends only to cases of *actual controversy.* Judicial Code, Section 274d. The Supreme Court has recently pointed out that there must, to support a declaratory judgment, be "action of a definite and concrete character constituting an actual or threatened interference with the rights of the persons complaining."

Ashwander v. *Tennessee Valley Authority*, 297 U. S. 288, at 325 (1936);

Electric Bond Co. v. *Comm.*, 303 U. S. 419, at 443 (1938);

Banning v. *Marsh*, 124 Nebr. 207, 245 N. W. 775, at 776 (1932);

Axton v. *Goodman*, 205 Ky. 382, 265 S. W. 806, at 807 (1924).

The same disassociation from the power to enforce the stays which prevents an injunction against the Commission bars a declaratory judgment—the declaratory judgment

does not attempt to change the essential requisites for the exercise of judicial power. The fundamental difficulty is that the Commission has nothing to do with the enforcement of the stays.

Nor can an injunction issue against the local officers to prevent them, under Count I, from collecting any taxes without including plaintiff's judgment therein. There is an adequate legal remedy—mandamus, of which the plaintiff, indeed, had availed itself. Ancillary mandamus is, under settled law, the only way to enforce the judgment if a levy of taxes is sought and a bill in equity does not lie:

Walkley v. *City of Muscatine*, 6 Wall. 481, at 482 (1867);
Rees v. *City of Watertown*, 19 Wall. 107, at 124 (1873);
Thompson v. *Allen County*, 115 U. S. 550 (1885).

Since the remedy by mandamus is adequate, a declaratory judgment against the local officials does not lie. While some small conflict of authority exists in cases where the legal remedy is not adequate, there is no opportunity for the declaratory judgment where the legal remedy is plain and enough.

Automotive Equipment, Inc., v. *Trico Products Corp.*, 11 Fed. Supp. 292 (U. S. D. C., W. D. N. Y., 1935);
Zenie Bros. v. *Miskend*, 10 Fed. Supp. 779, at 782 (D. C., S. D. N. Y., 1935).

If this should result in the plaintiff being denied mandamus in the discretion of the court, as in *United States ex rel. Christmas* v. *Asbury Park*, 78 F. (2d) 1003 (C. C. A. 3rd 1935), it would merely go to show that the plaintiff had no interest in the controversy sufficient to justify the granting of a declaratory judgment, as intimated in *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288 (1936).

Cases holding that the stays are discretionary and constitutional:

Your petitioners do not believe there is any need to consider the constitutionality of the stays, since they feel that plaintiff has failed to make out a case upon its pleadings for the exercise of either injunction or declaratory judgment. The following cases will serve to illustrate, however, that the stays are discretionary and constitutional.

The right of mandamus which plaintiff may have possessed was at all times subject to the rule that mandamus is a discretionary remedy, to be exercised only in the sound discretion of the court. This has always been the rule in the Federal courts, most recently announced with precise application to the New Jersey statute here under consideration:

United States ex rel. Christmas v. *Asbury Park*, 78 F. (2d) 1003 (C. C. A. 3rd 1935), cert. den. 296 U. S. 624 (1935).

The Circuit Court of Appeals there said that mandamus was to be granted by the court only in the exercise of a sound discretion. That is the precise wording and intent of the statute here involved. The State law is in accord with the Federal law. No argument can be made, of course, that the statutory stay is to be applied by the Federal court without power to relax it, in contradistinction to the discretionary stay power already existing there. Naturally no State statute is drawn in an attempt to confer upon or take from a Federal court its power to issue writs.

The stay provisions have been set out above. All of them are effective only "until otherwise specially ordered by the Supreme Court or a justice thereof in an appropriate proceeding for such purpose". In addition, any creditor may apply to the Supreme Court to vacate, modify or restrict any stay.

In the New Jersey courts as well the remedy of mandamus is a discretionary one. The Act was considered on constitutional grounds four years ago by the highest court of New Jersey, and held valid.

Hourigan v. *North Bergen Township*, 113 N. J. Law 143, 172 Atl. 193, concurring opinion 172 Atl. 785 (N. J. Err. and App. 1934).

The aversion of the New Jersey courts to permitting a single creditor a preference over all other creditors in a race of diligence to secure the funds of an insolvent municipality was well-illustrated in:

Vanderpoel v. *Borough of Mt. Ephraim*, 111 N. J. Law 423, at 424, 168 Atl. 575 (N. J. Err. and App. 1933).

The only stays in the Act complained of are stays discretionary with the State court. The Federal court has the same discretion, irrespective of the Act, as the State court. The fact that the State court has this discretion to relax them does not render them unconstitutional. If they were otherwise bad, it would save them. The Supreme Court has ruled that the second Frazier-Lemke Act, since it had such a provision, complied with the requirements of due process:

Wright v. *Vinton Branch Bank*, 300 U. S. 440, at 460-81 (1937).

Cases holding that plaintiff is not entitled to injunction or declaratory judgment against the acceptance of bonds for taxes:

There is no dispute between the parties that the plaintiff attacks acceptance of bonds for tax payments, rather than tax compromises generally. October 11, 1935, six months before the complaint was filed, the Commission resolved to make no further bond tax settlements save those then

pending. It has been stipulated by the parties that this had been adhered to. For that reason neither injunction nor declaratory judgment can issue, for there is no real threat to plaintiff:

Morrison v. *Fall*, 290 Fed. 306 (App. D. C., 1923), affirmed *sub. nom. Morrison* v. *Work*, 266 U. S. 481 (1925);

Ashwander v. *Tennessee Valley Authority*, 297 U. S. 288, at 325 (1936);

Electric Bond Co. v. *Comm.*, 303 U. S. 419, at 443 (1938).

Plaintiff conceivably might see fit to claim that the possibility that the Commission might assent to a bond compromise at some time in the future constitutes some sort of a threat. Equity, however, may not be invoked against an inoperative statute because of its mere existence, particularly with the procedure here attempted:

Sperry-Hutchinson Co. v. *Kuhn*, 212 Fed. 555, at 557 (U. S. D. C., E. D. Mich., 1912).

The *Ashwander* case demonstrates that the declaratory judgment does not allow actions supported solely on supposition.

Passing that point, can there be doubt that the conceded power of the municipality to "compromise taxes" includes power to do so by accepting bonds? Unfairness and preference to one set of bondholders could justify setting such action aside on constitutional grounds. No proof was offered of such unfairness, nor was any attempt made to show the power was not or could not be exercised fairly and constitutionally. The admitted benefits of such action are great, for property is thus kept on the tax roll, the municipality's interest burden is lessened, and remaining bond-

holders have an increased ratio of basic security to the debt they hold. No tax liens are extinguished, and the Commission allowed only previous year's taxes so to be extinguished, requiring full payment in cash for the current year.

When the bonds were issued the municipality could compromise taxes where they exceeded the value of the Property, *i. e.*, were in fact uncollectible.

Pamphlet Laws of 1928 of New Jersey, Chapter 123, Section 1, at page 250.

There is no proof in the instant case that the Commission ever allowed settlements where the taxes were otherwise collectible.

Cases holding that plaintiff's rights on its bonds are governed by the Tax Act of 1918 rather than the Executions Act:

The New Jersey courts have never had occasion to rule on this question. Plaintiff claims that it is entitled to levy execution under Section 35 of the Executions Act and Section 237 of the School Law. These sections (here denominated the Executions Act) governed executions against school districts:

Pamphlet Laws of 1881 of New Jersey, Chapter 77, Section 1, page 80;

Pamphlet Laws of 1903 of New Jersey (2nd Sp. Sess.), Chapter 1, Section 237, page 93.

Defendants contend that in 1930, when plaintiff's bonds were issued, these had been superseded by the Tax Law of 1918.

Pamphlet Laws of 1918 of New Jersey, Chapter 236, Section 505, page 865, second sentence.

The Tax Act of 1918 governs executions against "taxing districts". There can be no doubt that a school district in New Jersey is a taxing district.

Pamphlet Laws of 1918 of New Jersey, Chapter 236, Section 101, page 847;

Pamphlet Laws of 1910 of New Jersey, Chapter 242, Section 1, page 399.

Since the inhabitants of a school district have the power to "raise * * * a special district tax", a school district is a taxing district.

The Executions Act required the execution against a school district to be lodged with the assessors of the taxing district. The Tax Act of 1918 requires it to be lodged with the County Board of Taxation. The two provisions simply cannot exist side by side—if they do, then a judgment creditor can have two executions, two mandamuses, and two taxes.

Cases holding that plaintiff's procedural rights on its bonds were lost by merger of its rights on its original obligation in its judgment:

When a cause of action is reduced to judgment, the judgment merges both the original cause of action and the evidence of the debt.

Schuler v. *Israel*, 120 U. S. 506, at 509 (1887);

Barnes v. *Drake*, 31 N. J. Law 317 (N. J. Supr. 1865);

Friedland v. *Isquith*, 106 N. J. Eq. 349, 150 Atl. 840 (N. J. Ch. 1930).

Cases holding that appeal is the proper remedy:

Matthews v. *Rodgers*, 248 U. S. 521 (1932);
Stratton v. *St. Louis S. W. Ry. Co.*, 284 U. S. 530 (1932).

Dated August 29, 1938.

DAVID T. WILENTZ, J. H. THAYER MARTIN and WALTER R. DARBY, as and Constituting the Municipal Finance Commission of the State of New Jersey; EARL KIRCHER, CONRAD WEBER and WILLIAM G. HIRSCH, Members of the Board of Assessors of the Borough of Runnemede, New Jersey; and ALBERT W. SPENCER, Tax Collector of the Borough of Runnemede, New Jersey,

Appellants,

WILLIAM A. STEVENS,
Solicitor for Appellants David T. Wilentz, J. H. Thayer Martin and Walter R. Darby, as and Constituting the Municipal Finance Commission of the State of New Jersey;

S. LEWIS DAVIS,
Solicitor for Appellants Earl Kircher, Conrad Weber and William G. Hirsch, Members of the Board of Assessors of the Borough of Runnemede, New Jersey, and Albert W. Spencer, Tax Collector of the Borough of Runnemede, New Jersey.

EXHIBIT "A".

UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY.

In Equity. E-5515.

SOVEREIGN CAMP, WOODMEN OF THE WORLD, *Complainant*,

vs.

DAVID T. WILENTZ, Attorney General of the State of New Jersey; J. H. THAYER MARTIN, State Tax Commissioner of the State of New Jersey, and WALTER R. DARBY, Commissioner of Municipal Accounts of the State of New Jersey, as and Constituting the Municipal Finance Commission of the State of New Jersey; EARL KIRCHER, CONRAD WEBER and WILLIAM G. HIRSCH, Members of the Board of Assessors of the Borough of Runnemede, New Jersey, and ALBERT W. SPENCER, Tax Collector of the Borough of Runnemede, New Jersey, *Defendants*.

ON BILL FOR INJUNCTION, ETC.

(Filed March 21, 1938.)

Arthur T. Vanderbilt, for Complainant.

William A. Stevens, for Municipal Finance Commission.

E. J. Dimock, B. L. Visscher and Arnold Frye, of Counsel.

Joseph Varbalow, for Members of Board of Assessors and Tax Collector of the Borough of Runnemede.

Harry Grossman, of Counsel.

Before Davis, Circuit Judge, and Avis and Forman, District Judges.

AVIS, *District Judge:*

The bill of complaint in this cause contains four counts: the first, in general, alleging that the School District of Runnemede, New Jersey, is coterminous with the Borough of Runnemede, a municipal corporation of the State of

New Jersey, and that complainant is the owner and holder of a final judgment, in the amount of $21,776.21, entered in this court on December 5, 1935, against the Board of Education of said Borough on certain bonds then matured, and overdue coupons, held by said complainant and unpaid; that execution was issued on said judgment, served by the United States Marshal on the officers of said Borough as required by law, and returned *nulla bona* on January 5, 1936; that the officers of said Borough have failed and neglected to provide for the payment of said judgment in accordance with the statutes of the State of New Jersey and to make an assessment upon the persons and property in said Borough to raise the money to satisfy said judgment and execution.

The first count of said bill further alleges that a mandamus proceeding is pending in this court, which is undetermined.

It is alleged that the failure and refusal of the officers of said Borough to make said assessment and levy is based upon the fact that said School District is and has been under the control of the Municipal Finance Commission of the State of New Jersey, under the statutes of said State; and in accordance with the provisions of said statutes no judgment, levy or execution against such School District, or property thereof shall be enforced until otherwise specially ordered by the Supreme Court of the State of New Jersey, or a Justice thereof, after notice to the Commission, &c.

It is further alleged that the statute authorizing the said Commission was passed and approved after the issue of the bonds and coupons, the basis of the judgment so held by the complainant.

The prayers of this count are:

(a) That subpœna issue.

(b) That defendant Municipal Finance Commission be restrained from functioning in said School District.

(c) That said Commission be temporarily restrained.

(d) That this court adjudge and declare Chapter 330, Laws of 1933, and Chapters 195 and 258, Laws of 1935,

as amended and supplemented, unconstitutional and void insofar as they attempt to affect the enforceability of complainant's bonds and judgment by staying proceedings for the enforcement thereof.

(e) That the assessing and collecting officers of said Borough be restrained from assessing, levying or collecting any taxes in said Borough for the year 1936, without including the amount due on complainant's judgment.

(f) That it be adjudged and declared that complainant's right to collect is governed solely by Section 35 of the Execution Act and Section 237 of the School Laws of New Jersey, as cited in the bill of complaint.

(g) Other and further relief as may be equitable and just.

The second count embodies all of the allegations of fact and law contained in the first count; alleges that it owns bonds of the School District of Runnemede, dated June 1, 1930, numbered 9 to 78, inclusive, in the amount of $1,000 each, with the interest coupons attached, the principal of said bonds accruing serially, and that by reason of the enactment of the statutes relating to the Municipal Finance Commission, which attempt to restrain the enforcement of any obligations of a municipality under the supervision of said Commission, a cloud of unenforceability has been publicly cast upon complainant's bonds, and that by reason thereof complainant has been and will continue to be irreparably damaged.

The prayers in this count are:

(a) For subpœna.

(b) That the cloud be removed by restraint against defendants Wilentz, Martin and Darby, constituting the Municipal Finance Commission, and the Commission restrained from functioning in said School District.

(c) That temporary or interlocutory injunction and restraint issue.

(d) That the statutes creating the Municipal Finance Commission be declared unconstitutional and void as to complainant's bonds.

(e) That complainant's rights to compel a levy and collection of taxes is governed solely by the Execution Act and School Laws of the State of New Jersey.

(f) For other and further relief as may be equitable and just.

The third count realleges the facts and law as contained in the first count, and further alleges that the Commission has approved resolutions of the Borough providing for compromise of certain taxes and assessments due said Borough by accepting bonds in payment thereof. Alleges that such action gives a preference; that the security of complainant's bonds is thereby impaired, all of which is in violation of the United States Constitution, to wit, Article I, Section 10.

The prayers are:

(a) For subpœna.

(b) That the Municipal Finance Commission be restrained from assenting to such compromises.

(c) That said Commission be restrained from authorizing or assenting to the acceptance of any medium other than lawful money in payment of taxes.

(d) That the tax collector of the Borough be restrained from receiving payment of taxes, except from payment of full amount, interest and penalties.

(e) That said collector be restrained from accepting any medium in payment of taxes other than lawful money.

(f) That this court decree that Section 6 of Chapter 330, Laws of 1933, as amended and supplemented, to be unconstitutional and void as to complainant's judgment and bonds, as being contrary to Article I, Section 10 of the United States Constitution.

(g) For other and further relief.

Count four realleges and reaffirms the facts and law alleged in the first count and in paragraph 2 of the second count, and is in the nature of an action for a declaratory decree as to the right of the complainant to make collection

on its bonds and coupons because of the unconstitutionality of the stays contained in the Municipal Finance Commission Acts of the State of New Jersey.

Its prayers are:

(a) For subpœna.

(b) That this court hold, adjudge and declare that, as to the School District bonds issued prior to their enactment, the Municipal Finance Commission Acts of the State of New Jersey are unconstitutional and void, contrary to Article I, Section 10 of the United States Constitution.

(c) That the Commission be enjoined in the enforcement and execution of said statutes.

(d) That this court restrain the Commission and its members from functioning in the School District of the Borough of Runnemede.

(e) For other and further relief.

The matter came before the Court originally on June 23, 1936, when it appeared that the validity of a State statute was challenged, requiring the convening of a Three Judge Court. Arrangements were made to convene such a court, and on the aforesaid date an order to show cause was issued, returnable on July 9, 1936, at Trenton.

On that date, after a hearing, it was agreed in open court that the defendants would not accept or approve the acceptance, until the further order of the court, of bonds of the Borough or School District of Runnemede in payment of current or delinquent taxes, and further that counsel would prepare for final hearing on or before September 15, 1936. Upon this agreement, no preliminary injunction was issued, and decision on all questions was postponed until final hearing.

Answer for all defendants was filed on August 1, 1936, and final hearing took place on October 29, 1936. On this date a stipulation of certain facts, signed by counsel for the respective parties, was filed, and some witnesses produced who gave their testimony.

Argument has been heard and briefs submitted.

From the testimony taken, and the stipulation filed, we find as facts:

(1) That the Borough of Runnemede is a municipal corporation of the State of New Jersey.

(2) That the Board of Education of the Borough of Runnemede is coterminous with the Borough of Runnemede.

(3) That on or about June 1, 1930 the Board of Education of the Borough of Runnemede issued and sold $78,000 school bonds, dated June 1, 1930, numbered 1 to 78, inclusive, of the denomination of $1000 each, and bearing interest at the rate of five and one-quarter per cent per annum, payable semi-annually on the first days of June and December of each year; that complainant purchased all of said bonds; that the bonds were serial bonds, maturing in numerical order, $2000 on June first in each year 1932 to 1937, inclusive, and $3000 on June first in each year 1938 to 1959, inclusive; that on June 1, 1932, Numbers 1 and 2 of said bonds were paid; that the bonds thereafter maturing have not been paid, and that the interest on the remaining bonds, which became due on June 1, 1932, or at any subsequent date, has not been paid.

(4) That upon May 15, 1934, after a summary investigation, and upon application of the Borough of Runnemede Frank T. Lloyd, Justice of the Supreme Court of the State of New Jersey, made and entered an order, in which it was determined that the Borough was unable to meet its obligations, and the Municipal Finance Commission was authorized and instructed to function in said Borough with all the powers and duties conferred by the statute.

(5) That thereupon the said Commission commenced to function in said Borough, and has since that time so functioned with relation thereto, as well as with relation to the said Board of Education.

(6) That judgment on the overdue bonds, and the delinquent interest represented by the coupons upon which default had been made, was entered in this court in a suit brought by complainant on December 5, 1935 for the sum of $21,776.21.

(7) That execution was issued thereon, on December 24, 1935, directed to the Marshal of the District of New Jersey, which execution was in the usual form, and was returned by the said Marshal as served upon Gardner S. Driver, Secretary of the Camden County Board of Taxation, Albert W. Spencer, Tax Collector of the Borough of Runnemede, and William G. Hirsch, Tax Assessor for said Borough.

(8) That Arthur T. Vanderbilt, counsel for complainant, on January 3, 1936, addressed a letter to Conwood (Conrad) Weber, Secretary, Board of Tax Assessments of said Borough, reciting the serving of the execution, and inquiring as to whether the Board of Assessors would assess and levy the amount due on the execution, and that no reply thereto was ever received.

(9) That the said Arthur T. Vanderbilt, counsel as aforesaid, also wrote and despatched a letter to the Secretary of the Camden County Board of Taxation, requesting information as to whether the said Board of Taxation would add the amount due upon the execution to the amount certified by the taxing officials of said Borough, pursuant to Section 505 of P. L. 1918, Chapter 236. To this letter said Secretary replied, advising that the matter would be referred to his Board, and that said Board would probably refer the matter to the county solicitor. The county solicitor, on or about February 24, 1936, by letter, advised counsel for complainant that the Camden County Board of Taxation would not so add the amount, until the determination of the mandamus proceedings then pending.

(10) That the Board of Assessors failed and omitted to add the amount of said judgment to the moneys to be raised for the year 1936, and that one reason for said failure and omission was because the Municipal Finance Commission was functioning in the municipality, and that said assessors made no change in the rate as fixed by the county tax board; that the county tax board made no change to include the amount due on the execution because it had been advised by special counsel of the Municipal Finance Commission that litigation was then pending in the United States District Court for the District of New Jersey as to the necessity of adding said additional amount.

(11) Although the evidence produced by complainant relating to the effect of the legislation claimed to be unconstitutional upon the value of municipal securities, is undisputed, it is not sufficient to establish the fact claimed by complainant that said legislation had publicly cast a cloud of unenforceability, or that by reason thereof the market value of complainant's bonds has been greatly depreciated.

Conclusions of law:

We are satisfied that, under the provisions of Section 266 of the Judicial Code (28 U. S. C. A. sec. 380), the issues raised in the pleadings in this cause have been legally presented to a Three-Judge Court, and that this Court, as constituted, has jurisdiction to dispose of the question of preliminary injunction, as well as the determination of the issues presented by the pleadings. All matters involved were, by stipulation and order, continued to final hearing, upon the agreement of defendants not to accept or approve acceptance of bonds in payment of current or delinquent taxes until the further order of the Court.

We hold that the members of the Municipal Finance Commission are proper, necessary and indispensable parties to the action because of the supervisory control which the act of the Legislature of the State of New Jersey gives them over the municipality in question; that as such members they are given authority to enforce the provisions of the act, and that such authority invests them with powers making it necessary that they should be party defendants for the enforcement of any decree that may be made in this action. This conclusion applies to all of the counts in the bill of complaint.

We also determine that the rights of the complainant are not impaired or changed by reason of the fact that the judgment on bonds and coupons has been entered in this court, but that its rights are to be determined by the law in effect at the time the bonds were issued and the contract made.

We have examined the proofs and considered the argument and briefs submitted as to the relief prayed for in count one, and have concluded, without citing the many authorities presented on behalf of all parties, that the com-

plainant is entitled to a decree adjudging and declaring Chapter 330, Laws of New Jersey 1933, and Chapters 195 and 258, Laws of New Jersey 1935, as amended and supplemented, to be unconstitutional and void insofar as they affect the right of the complainant to enforce its judgment obtained and entered in this court, and that such enforcement shall be in accordance with the laws existing in the State of New Jersey at the time of the issuance and sale of the bonds in question, and the laws applicable are Section 35 of the Execution Act (2 Comp. Stats. p. 2256) and Section 237 of the School Law (4 Comp. Stats. 4804). The provisions of the Tax Act of 1918 did not, by implication, repeal the above mentioned laws, upon which the complainant relies. Such repeals are not favored, and the provisions of the various statutes are not materially inconsistent.

The defendants, members of the Municipal Finance Commission, will be restrained from functioning in the Borough of Runnemede, to the extent that such functioning may be inconsistent with the right of the complainant to enforce its execution in the manner herein stated.

The prayer to enjoin and restrain the Assessors of said Borough from assessing and levying the taxes, and the Collector from collecting the same, without including therein the amount of complainant's judgment is denied, as beyond the power of this Court, as well as unnecessary in view of the relief granted on other prayers.

We are not construing the provisions of the Municipal Finance Commission Acts of the State of New Jersey, its constitutionality or its effect, except as the stays therein contained affect the right of the complainant to enforce its judgment.

As to count two, we have determined as a fact that the complainant has not produced sufficient evidence to satisfy the Court that it should use the extraordinary remedy of injunction to restrain the members of the Municipal Finance Commission from functioning in the Borough of Runnemede, and the conclusions as to count one of the complaint give ample and sufficient protection for the collection of the balance of the bonds owned by complainant.

The necessity for an injunction under count three appears to be moot, if the Commission adheres to its present policy. However, it is apparent that settlement of taxes by the acceptance of bonds may materially interfere with the complainant in the collection of its judgment, and restraint will be granted enjoining the defendants from making settlement for taxes by any medium except in accordance with the laws of the State of New Jersey.

Count four is based upon, and asks for relief under, the Declaratory Judgment Act (28 U. S. C. A. sec. 400). An examination of the cases indicates that the complainant has an "actual controversy", under the provisions of that act, and is entitled to a decree of similar character to that granted herein with relation to count one, applicable to the remainder of complainant's bonds, if and when judgment may be entered thereon, or any portion thereof, in this court and execution issued.

Decree will be made in accordance with this opinion.

(8252)

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Supreme Court, U. S.
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upreme Court of the United States

OCTOBER TERM, 1938.

No. 448

VID T. WILENTZ, J. H. THAYER MARTIN AND WALTER R. DARBY, Etc., *et al.*,

Appellants,

vs.

SOVEREIGN CAMP, WOODMEN OF THE WORLD.

EAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

BRIEF FOR APPELLANTS.

E. J. DIMOCK,
WILLIAM A. STEVENS,
Counsel for DAVID T. WILENTZ, J. H. THAYER MARTIN and WALTER R. DARBY, as and constituting the Municipal Finance Commission of the State of New Jersey, Appellants.

S. LEWIS DAVIS,
FRANK T. LLOYD,
Counsel for EARL KIRCHER, CONRAD WEBER, and WILLIAM G. HIRSCH, members of the Board of Assessors of the Borough of Runnemede, New Jersey, and ALBERT W. SPENCER, Tax Collector of the Borough of Runnemede, New Jersey, Appellants.

VISSCHER,
LD FRYE,
Of Counsel.

INDEX.

(a) Subject Index of the Matter in the Brief.

	PAGE
(b) Official Report of Opinion Below	1
(c) Statement of Grounds of Jurisdiction	1
(d) Statement of the Case	2
Preliminary	2
Facts	5
(e) Specification of Such of the Assigned Errors as are Intended to be Urged	9
(f) Argument	11
Summary	11
Point I— The court erred in rendering the declaratory judgment that the stay provisions of the Act Concerning Municipal Finances are unconstitutional and in issuing the injunction based thereon	21
A. In general	21
a. The effect of the decision below	21
b. The three-fold purpose and the provisions of the New Jersey Act Concerning Municipal Finances	28
1. Control of Current Finances	29
2. Abolition of the Race of Diligence	31
3. The Settlement Binding upon All	34
c. The constitutionality of the stay provisions	35

PAGE

B. The enumeration of the statutes which govern the manner of the plaintiff's enforcement of its execution was erroneous 4

POINT II—

The court erred in rendering the declaratory judgment that the acceptance of bonds in settlement of taxes may interfere with the enforcement of the plaintiff's judgment and in issuing the injunction based upon it 4

POINT III—

Even if the stay provisions and the provisions for acceptance of bonds in payment of taxes were unconstitutional, the three-judge court was without jurisdiction because no substantial case was made out for an injunction against state officers in the enforcement of such provisions 5

A. As to the jurisdiction of the three-judge court with respect to the stay provisions of the statute 5

B. As to the jurisdiction of the three-judge court with respect to the provisions for acceptance of bonds in payment of taxes 6

CONCLUSION—

The decree below should be reversed and the cause remanded to the United States District Court for the District of New Jersey with instructions to proceed independently of Section 266 of the Judicial Code and to dismiss the complaint upon the merits 6

PAGE

APPENDIX A—
Statement of the activities of the Municipal Finance Commission with respect to the borough and school district of Runnemede 67

APPENDIX B—
Provisions of the New Jersey Execution Act with respect to the enforcement of executions against the taxing power 85

APPENDIX C—
Acts relating to the Municipal Finance Commission 89

TABLE OF CASES.

Asbury Park v. *Christmas*, 78 F. 2d 1003 (C. C. A. 3, 1935), *cert.* denied 296 U. S. 624 (1935) 12, 13, 14, *23*, 24, 25, 26, 27, 35, 36

Canada Southern Ry. v. *Gebhard*, 109 U. S. 527 (1883) 34

Carteret County v. *Sovereign Camp, Woodmen of the World*, 78 F. 2d 337 (C. C. A. 4, 1935) 42

Chastleton Corporation v. *Sinclair*, 264 U. S. 543 (1924) 44

Cleveland v. *United States*, 166 Fed. 677 (C. C. A. 6, 1909) 37

Continental Illinois Nat'l. Bank v. *Chic., R. I. & P. Ry.*, 294 U. S. 648 (1935) 34

Deere v. *Board of Com'rs. of Rio Grande County*, 33 Fed. 823 (C. C. D. Colo., 1888) 37

East St. Louis v. *Amy*, 120 U. S. 600 (1887) 15, 37

Firemen's Insurance Co. v. *Beha*, 30 F. 2d 539 (D. C. S. D. N. Y. 1928), aff'd. 278 U. S. 580 (1929—mem.) 63

PAGE

Galena v. *Amy*, 5 Wall. 705 (1866) 14, 37
Graham v. *Quinlan*, 207 Fed. 268 (C. C. A. 6, 1913) .. 37
Groner v. *United States ex rel. Snower*, 73 F. 2d 126 (C. C. A. 8, 1934) 42
Gully v. *Interstate Natural Gas Co.*, 292 U. S. 16 (1934) 19, 54

Home Building & Loan Ass'n. v. *Blaisdell*, 290 U. S. 398 (1934) 16, 40, 44
Hourigan v. *North Bergen Township*, 113 N. J. Law 143, 172 Atl. 193, concurring opinion, 172 Atl. 785 (E. & A. 1934), aff'g. 11 N. J. Misc. R. 194 (Supr. 1933) 12, 15, 16, 23, 28, *39*, 42, *43*, 44, 45

Louisville Joint Stock Land Bank v. *Radford*, 295 U. S. 555 (1935) 16, 46

Oklahoma Gas & Electric Co. v. *Oklahoma Packing Co.*, 292 U. S. 386 (1934) 61

Perry v. *Town of Samson*, 11 F. 2d 655 (D. C. M. D. Ala., 1926), aff'd. 17 F. 2d 1 (C. C. A. 5, 1927) 37
Pittsburg Steel Company v. *Baltimore Equitable Soc.*, 226 U. S. 455 (1912) 15, 41, 42
Pleasant v. *Missouri-Kansas-Texas Ry.*, 66 F. 2d 842 (C. C. A. 10, 1933), *cert.* denied 291 U. S. 659 (1934) 21, 63
Plymouth Coal Co. v. *Pennsylvania*, 232 U. S. 531 (1914) 46

Rahway v. *Munday*, 44 N. J. Law 395 (E. & A. 1882) 14, 15, *36*, 37, 39, 40
Rippel v. *Asbury Park*, 118 N. J. Law 45, 190 Atl. 489 (Supr. 1937) 13, 24, 42
Rogers v. *Penobscot Mining Company*, 154 Fed. 606 (C. C. A. 8, 1907) 21, 63

PAGE

alem Trust Co. v. *Manufacturers' Finance Co.*, 264 U. S. 182 (1924) 21, 63, 65

overeign Camp, Woodmen of the World v. *Wilentz*, 23 F. Supp. 23 (D. C. D. N. J., 1938) 1

nited States v. *Bekins*, 304 U. S. 27 (1938) 34

nited States ex rel. Norfolk & West Ry. Co. v. *Township of Chester*, (D. C. D. N. J., 1936, unreported) 83

. S. ex rel. Barker v. *Borough of Ft. Lee* (C. C. A. 3, unreported) 48

nited States v. *Key West*, 78 Fed. 88 (C. C. A. 5, 1896) 37

U. S. ex rel. Woodmen of the World v. *Board of Education of Runnemede* (D. C. D. N. J. unreported) .. 51

anderpoel v. *Borough of Mt. Ephraim*, 111 N. J. Law 423, 168 Atl. 575 (E. & A. 1933) 15, *37*, 38, 39, 41

orthen Company v. *Thomas*, 292 U. S. 426 (1934) ... 16, *45*

right v. *Vinton Branch*, 300 U. S. 440 (1937) 16, 45

TABLE OF STATUTES

FEDERAL

ederal Municipal Bankruptcy Act 34, 35

udicial Code, Sec. 266 ..... 2, 9, 18, 53, 54, 61, 62

econd Frazier-Lemke Act 45

6 Stat. 557 53

6 Stat. 1172 53

7 Stat. 1013 53

3 Stat. 938 53

1 U. S. C. s. 403-c 35

8 U. S. C. s. 380 55

New Jersey

Page

Act concerning Municipal Finances (P. L. 1931, ch. 340 as amended and supplemented) 5, 22

Sec. 101 23
209 ..... 29, 58
209-a 58
212 ..... 17, 20, 30, 50, 51, 62, 63, 64
213 30
302-a 30
303 30
306 ..... 30, 58
351 ..... 11, 22, 33, 57
352 ..... 11, 22, 23, 25, 33, 57
353 ..... 11, 22, 33, 57
354 ..... 11, 22, 23, 33, 57
355 ..... 11, 16, 22, 23, 29, 33, 40, 45, 57
405 ..... 16, 43, 46

Execution Act

Sec. 34 (2 Comp. Stats. (1910) p. 2255) 17, 48, 85
Sec. 35 (2 Comp. Stats. (1910) p. 2256) 10, 17, 47, 48, 85

P. L. N. J.

1928, ch. 123 ..... 17, 50, 51
1933, ch. 330 ..... 9, 19
1933, ch. 331 34
1935, ch. 190 34
1935, ch. 191 10
1935, ch. 194 30
1935, ch. 195 ..... 9, 10, 57
1935, ch. 258 ..... 9, 10, 57
1935, ch. 292 ..... 30, 58, 59
1935, ch. 314 86
1936, ch. 50 46
1936, ch. 251 86

PAGE

School Law, Sec. 237 (4 Comp. Stats. (1910) p. 4804) 10, 47, 85

Tax Act of 1918 (P. L. 1918, ch. 236, pp. 847, 865, Sec. 505) 6, 17, 47, 48

MISCELLANEOUS CITATIONS.

Comity by the Federal Courts to State Statutory Receiverships of Defaulting Municipalities, 45 Yale Law Journal 702 ..... 28n

Legal Problems of Financially Embarrassed Municipalities, 38 Va. Law Rev. 39 ..... 28n

Municipal Debt Adjustment and the Supreme Court, 46 Yale Law Journal 199, 212 ..... 28n

13 New York Univ. L. Q. 454 (1936) 28n

Supreme Court of the United States,
OCTOBER TERM—1938.

No. 448.

DAVID T. WILENTZ, J. H. THAYER MARTIN and WALTER R. DARBY, ETC., ET AL.,

Appellants,

vs.

SOVEREIGN CAMP, WOODMEN OF THE WORLD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

BRIEF FOR APPELLANTS.

(b)

Official Report of Opinion Below.

The official report of the opinion delivered in the Court below by Judge John Boyd Avis will be found at 23 Federal Supplement 23 (U. S. D. C., D. N. J. 1938).

(c)

Statement of Grounds of Jurisdiction.

In compliance with paragraph 1 of Rule 12 of this Court, appellant duly filed a concise statement of the grounds on which the jurisdiction of this Court is invoked.

(d)

STATEMENT OF THE CASE.

Preliminary.

This is a suit in equity brought by a United States District Court judgment creditor, whose execution had been returned unsatisfied, to obtain injunctions and declaratory judgments against state officials and local government officials in the State of New Jersey. The state officials named are the Attorney General, the State Tax Commissioner and the Commissioner of Municipal Accounts, constituting the State Municipal Finance Commission, and the local officials are the Board of Assessors and the Tax Collector of the Borough of Runnemede, New Jersey. The basis of the suit is, in general, a claim of unconstitutionality of the New Jersey Act Concerning Municipal Finances in so far as it contains (a) provisions authorizing the court to require that suits against municipalities under the supervision of the Municipal Finance Commission be brought for the benefit of all creditors similarly situated and staying suits by individual creditors, and (b) provisions permitting the acceptance of bonds in payment of taxes in such municipalities.

An application was made for an interlocutory injunction before a three-judge court assembled pursuant to Section 266 of the Judicial Code on the theory that the character of relief demanded ousted the one-judge district court of jurisdiction. On the return day of the application for the interlocutory injunction, the hearing was adjourned until final hearing upon consent and order of continuance, and upon the defendants' agreement not to accept until the further order of the court any more bonds in payment of taxes. On October 29, 1936, the cause was heard on application for interlocutory injunction and on final hearing, and in the spring of 1938, the three-judge court filed an opinion holding that declaratory judgments should be rendered and permanent injunctions should be issued as therein indicated.

A decree in accordance with the opinion was entered June 6, 1938. Both the Municipal Finance Commission and the local government officials have appealed to this Court.

What the court below did was this:

As to the "stay" provisions—

It declared (R. 97) that the enforcement of the plaintiff's judgment should be in accordance with the laws existing in the State of New Jersey at the time of the issuance and sale of the bonds on which it was based (enumerating such laws).

It declared (R. 96, 99) that the stay provisions of the Act Concerning Municipal Finances were, as to the plaintiff's judgment, and as to the bonds held by the plaintiff and issued prior to the enactment of the stay provisions if and when judgment might be entered thereon in that court and execution issued, unconstitutional in so far as they affected the plaintiff's right to enforce its judgment or such a future judgment, as impairing the obligation of its contract.

It issued an injunction (R. 96, 99) against the Municipal Finance Commission's functioning in the borough to the extent that such functioning might be inconsistent with the right of the plaintiff to enforce in the manner stated its existing execution, or executions to be issued in the United States District Court upon judgments entered upon its bonds, but without prejudice to any of the powers and duties of the Municipal Finance Commission under the Act Concerning Municipal Finances except as the stays therein contained affected the right of the plaintiff to enforce its judgment or a judgment so entered.

As to the provisions permitting the acceptance of bonds in payment of taxes—

It declared (R. 98) that the acceptance of bonds in settlement of taxes might materially interfere with the plaintiff in the enforcement of its judgment.

It issued an injunction (R. 98) against all defendants from making settlement for taxes due and owing to the

borough by any medium except in accordance with the law of the State of New Jersey.

What the court refused to do was this:

It denied (R. 89, 96) as beyond the power of the court and unnecessary, a prayer in aid of pending mandamus proceedings that the local officials be enjoined from assessing, levying and collecting taxes without making provision for the plaintiff's judgment.

It denied (R. 94, 97) a prayer that the court remove a cloud upon the enforcibility of plaintiff's bonds and prevent a multiplicity of suits by enjoining the Municipal Finance Commission from functioning in the municipality, basing its denial in part upon a finding of fact that the plaintiff had not produced sufficient evidence to satisfy the court that it should use the extraordinary remedy of injunction to restrain the members of the Municipal Finance Commission from functioning in the municipality.

It failed to grant (R. 99) a prayer that the court enjoin and restrain the Municipal Finance Commission in the enforcement and execution of the stay provisions in the Municipal Finance Commission Act.

No appeal has been taken by the plaintiff.

The case as it comes to this court is, therefore:

That the three-judge court has held the stay provisions unconstitutional insofar as they affect the right of the plaintiff to enforce a judgment against this municipality *in this Court* and has accordingly enjoined the Municipal Finance Commission from functioning in this municipality to the extent that such functioning may be inconsistent with the right of the plaintiff to enforce such a judgment without prejudice to any of the Commission's powers and duties except as the stays in the Act Concerning Municipal Finances affect the right of the plaintiff to enforce such a judgment.

That the three-judge court has held that the acceptance of bonds in settlement of taxes may materially interfere

with the plaintiff in the enforcement of its judgment (and, presumably, that it is therefore unconstitutional) and has accordingly enjoined all defendants from accepting any settlement of taxes in any medium except in accordance with the laws of the State of New Jersey.

We shall deal with the correctness of the court's determination of the unconstitutionality of the stay provisions of the Act Concerning Municipal Finances in Point I, and with the correctness of its determination of the unconstitutionality of the provisions permitting acceptance of bonds in payment of taxes in Point II. In Point III, we shall make the point that the three-judge court was so clearly without jurisdiction that it was improvidently assembled and its decree should be annulled.

Facts.

Prior to May 15, 1934, the Borough of Runnemede, New Jersey, had defaulted for over sixty days in the payment of principal and interest of certain of its outstanding bonds or notes. The Borough Council, pursuant to Chapter 340 of the Laws of 1931, as amended and supplemented, (hereinafter referred to as the Act Concerning Municipal Finances, and printed in full as Appendix C, *infra*, pp. 89-148) petitioned Justice Lloyd of the Supreme Court of New Jersey, that the Municipal Finance Commission function in said municipality. The Justice, after summary investigation, made an order that the borough was unable to meet its obligations, and that order, together with the petition, was filed in the office of the Clerk of the Supreme Court of New Jersey. Thereupon, pursuant to the terms of the Act, the Municipal Finance Commission commenced to function in the borough and also in the school district of the borough, which is coterminous with the borough itself (Stipulation of Facts, R. 112-113).

On June 1, 1930, the plaintiff had purchased an issue of $78,000. of school bonds of the Board of Education of the

Borough of Runnemede, dated on that day, bearing interest at 5¼% per annum, payable semi-annually and maturing in numerical order, $2,000. on June 1 in each of the years 1932 to 1937, inclusive, and $3,000. on June 1 in each of the years 1938 to 1959, inclusive. On June 1, 1932, bonds Nos. 1 and 2 were paid. The Board of Education, however, defaulted in the payment of interest on the other bonds on June 1, 1932, and in the payment of principal on June 1, 1933. On or about July 12, 1935, the plaintiff sued on the defaulted bonds and coupons which had matured prior to that date, and a judgment for $21,776.21 was made and entered in favor of the plaintiff on December 5, 1935, in the United States District Court for the District of New Jersey (R. 113-114). Execution on that judgment was served upon the tax collector and tax assessor of the Borough of Runnemede and upon the County Board of Taxation of the County of Camden, in which the borough is situated, and execution was returned unsatisfied (Stipulation, R. 114, Return R. 124).

The plaintiff herein thereupon on February 14, 1936, filed a petition in the United States District Court for the District of New Jersey for a writ of mandamus to compel the assessment, levy and collection of taxes for the payment of the judgment (Stipulation, R. 115-116).

Counsel for the plaintiff on January 3, 1936, had written to the County Board of Taxation that the judgment had been obtained and execution served upon the Board, and asked whether the County Board would pursuant to Section 505 of Chapter 236 of the Laws of 1918, add the amount due to the amount to be raised by taxation in the Borough of Runnemede (Ex. 5 to Stipulation, R. 125-126). This letter was forwarded by counsel for the County of Camden to the secretary of the Municipal Finance Commission under date of February 8, 1936 (Ex. 12 to Stipulation, R. 127), and it was referred by the Commission to special counsel to the Commission, who replied to the counsel for the County Board of Taxation under date of February 18, 1936 (Ex. 13 to Stipulation, printed as Ex. C to Affidavit, R. 47-48). The

reply of special counsel to the Commission contained the following paragraph:

> "Of course, under the provisions of the Municipal Finance Commission Act, we will defend and oppose the granting of a writ on the ground that in the admitted insolvency of the municipality and School Board no writ of mandamus should issue to prefer any one creditor as against all creditors, in accordance with the Municipal Finance Commission law. This problem has had to be met in similar proceedings taken by clients advised by Mr. Vanderbilt."

Counsel for the County Board of Taxation thereupon replied to counsel for the plaintiff under date of February 24, 1936, that it was his understanding that there was pending a mandamus proceeding in the United States District Court, and that he was requested to advise counsel that the County Tax Board would not add the amount of the execution to the budget until a mandamus had been issued (Ex. 7 to Stipulation, R. 127).

The mandamus proceeding is still pending undetermined (Stipulation, R. 116).

The Borough of Runnemede is located in Camden County about six miles from the City of Camden. It has an area of about five square miles, and a population of some 2,450 (U. S. Gov. Census, 1930). The borough was improvidently formed, together with Bellmawr, Lawnside, Brooklawn and Mt. Ephraim from the old Centre Township in 1926 (R. 174), in the belief that the rising tide of prosperity would cause the suburban expansion of Camden in that direction, along the Black Horse Pike (R. 174). Extensive subdivision activities and speculative sales of realty followed (R. 167), and the borough, under the guidance of brokers interested in such expansion, went ahead rapidly with a relatively enormous layout of improvements, hoping to pay for them with assessment liens and increased valuations (R. 167). The depression brought these hopes to an abrupt end. The major part of the population of Runnemede are employed by the shipyards and other industries

of Camden and have only small salaries when they are working (R. 177). As a result of the collapse in the realty line, there are only about 726 buildings (R. 167), nearly all of a semi-bungalow type, and assessed at $1,500. to $3,000. (R. 173), on 6,327 lots and acre plots (R. 167). Isolated groups of houses are connected by grass grown streets (R. 167). A modern theatre in the borough was taken over by the town in fee simple due to total inability of its owners to meet taxes, and only recently could be disposed of for $10,000. (R. 203, 173). Land values have dropped to almost nothing (R. 174), and in early 1934 taxes and assessments against the 5,976 parcels of vacant land were uncollectible. An overlarge increase in the average tax bill, to be met by the few property owners living on their land or having improved their holdings, was impossible by reason of their lowered or lost wages.

In September, 1932, the borough could not meet interest and principal maturities on its funded debt and defaulted (R. 324). It successfully petitioned the New Jersey Supreme Court to the end that the Municipal Finance Commission might take over its affairs,—May 18, 1934 (*Ibid.*). On July 12, 1935, the Commission asserted its intention to function in the co-terminous school district of Runnemede in accordance with the provisions of the statute (R. 254).

The complaint stated that the Municipal Finance Commission had been "lax and dilatory" in its handling of the Borough and School District of Runnemede, that it was understaffed, dependent upon its employees for counsel and guidance, and had failed to produce beneficial results by its operation (Par. 19, R. 11-12).

Much evidence was introduced on this subject below. However, no finding with respect to it was made by the court and we fail to see how this question raised below has any bearing upon the issues brought before this Court by our appeal. We hesitate to add to the length which the indefiniteness of the decision below and the breadth of the subject make necessary in this brief. We have, however, marshalled

the facts which disprove this claim and added them as Appendix A to this brief, (*infra*, pp. 67-84), for use only in the event of a determination by this Court that the subject has a substantial bearing upon the questions before it.

(e)

Specification of Such of the Assigned Errors as are Intended to be Urged.

2. The said Court erred in assuming jurisdiction of the suit, under Section 266 of the Judicial Code (R. 101).

9. The said Court erred in denying these defendants' motion to remit the suit for trial to a single judge of the United States District Court for the District of New Jersey (R. 102).

25. The said Court erred in permanently enjoining and restraining defendant Municipal Finance Commission from functioning in the Borough of Runnemede, New Jersey, to the extent that such functioning may be inconsistent with the right of complainant to enforce its execution in the manner stated in the Final Decree (R. 103).

28. The said Court erred in failing to rule that the stays contained in the Municipal Finance Commission Act were constitutional (R. 103).

30. The said Court erred in ruling, in answer to subdivision D of the prayers of Count I of the Bill of Complaint, that Chapter 330, Laws of New Jersey, 1933, and Chapters 195 and 258, Laws of New Jersey, 1935, as amended and supplemented, are unconstitutional and void in so far as they affect the right of the complainant to enforce its judgment obtained and entered in the United States District Court for the District of New Jersey (R. 103-104).

31. The said Court erred in ruling, in answer to subdivision F of the prayers of Count I of the Bill of Complaint, that the enforcement of the complainant's judgment should be in accordance with the laws existing in the State of New

Jersey at the time of the issuance and sale of the bonds in question. (R. 104).

32. The said Court erred in ruling, in answer to subdivision F of the prayers of Count I of the bill of complaint, that the enforcement of complainant's judgment should be in accordance with and under the provisions of Section 35 of the Execution Act (2 Comp. Stats., p. 2256) and Section 237 of the School Law (4 Comp. Stats., p. 4804) (R. 104).

33. The said Court erred in ruling that Section 35 of the Execution Act (2 Comp. Stats., p. 2256) and Section 237 of the School Law (4 Comp. Stats., p. 4804) were not repealed by the provisions of the Tax Act of 1918 (R. 104).

38. The said Court erred in ruling in effect that acceptance of bonds in settlement of taxes may materially interfere with the complainant in the enforcement of its judgment (R. 104).

39. The said Court erred in enjoining and restraining defendants from making settlement for taxes due and owing to the Borough of Runnemede, New Jersey, by any medium "except in accordance with the laws of the State of New Jersey" (R. 104-105).

40. The said Court erred in enjoining and restraining defendants from accepting bonds in settlement of taxes (R. 105).

43. The said Court erred in ruling that Sections 8 and 9 of Chapter 330, Laws of New Jersey, 1933, and Chapters 191, 195 and 258, Laws of New Jersey, 1935, all as amended and supplemented, are, as to school district bonds held by complainant issued prior to their enactment, as and when judgment may be entered thereon or on any portion thereof in the United States District Court for the District of New Jersey, and execution issued, unconstitutional and void in so far as they affect the right of the complainant to enforce such a judgment (R. 105).

48. The said Court erred in permanently enjoining and restraining defendant Municipal Finance Commission from functioning in the Borough of Runnemede, New Jersey, to the extent that such functioning "may be inconsistent with the right of the complainant to enforce in the manner herein stated executions to be issued in this Court upon judgments entered upon such school district bonds" (R. 106).

(f)

ARGUMENT.

SUMMARY.

Summary of Point A that the court erred in holding unconstitutional the stay provisions of the Act concerning Municipal Finances.

Sections 351 to 355, inclusive, of the New Jersey Act Concerning Municipal Finances, in municipalities where the Municipal Finance Commission is functioning, stay proceedings for the enforcement of judgments against insolvent municipalities, and mandamus proceedings for that purpose, except that the New Jersey Supreme Court may relax these stays in any case; and, in particular, may authorize a mandamus proceeding brought by a creditor for the benefit of himself and all other creditors similarly situated. The Municipal Finance Commission is authorized to bring such an omnibus mandamus proceeding with the consent of the court.

The court below has held these stay provisions unconstitutional insofar as they affect the right of the plaintiff here to enforce a judgment which it has obtained in the federal court. The court does not anywhere in its decision determine in what way the stay provisions affect the right of the plaintiff to enforce its judgment. The court below has also enjoined the Municipal Finance Commission from functioning in the Borough of Runnemede to the extent that such func-

tioning may be inconsistent with the right of the plaintiff to enforce its execution. The court does not anywhere in its decision determine in what way the functioning of the Commission may be inconsistent with that right.

The New Jersey statute does not purport to have, and could not constitutionally have, any direct effect upon the powers of the courts of the United States. Nothing that the Municipal Finance Commission can do in connection with its functioning can either relax or impose the statutory stays. The decision below is therefore without practical effect. However, the moral effect of a decision by the United States courts that a state statute is unconstitutional is serious. For that reason, the State of New Jersey must attack the decision below.

Since the New Jersey statute can have no direct effect upon the power of the federal court, we must assume that the court below held it unconstitutional because of its indirect effect. Such an indirect effect could come only by reason of the acceptance of the principles of the New Jersey statute by the United States courts in their discretion as a matter of comity. The only interpretation which we can place upon the decision below is that the statute as applicable in the New Jersey courts is unconstitutional and that therefore it would be unconstitutional for the United States courts to adopt its principles as a matter of comity.

Even before the New Jersey courts were given by statute power to relax these stay provisions, they were held constitutional by the Court of Errors and Appeals in *Hourigan* v. *North Bergen Township*, 113 N. J. Law 143, 172 Atl. 193, concurring opinion 172 Atl. 785 (1934).

The federal courts without the benefit of any such statute reach a result substantially the same as the statutory stays by exercise of their discretion to withhold the writ of mandamus in behalf of individual creditors in cases where the municipality is endeavoring in good faith to provide to the limit of its power for equal treatment of all creditors. This was done by the Circuit Court of Appeals for the Third Circuit in *City of Asbury Park* v. *Christmas*, 78 F. 2d 103,

cert. denied 296 U. S. 624 (1935). The subsequent history of that legislation was that the Municipal Finance Commission required the City of Asbury Park to adopt a plan for the readjustment of its debt, and the United States District Court when the *Christmas* case was returned to it limited the creditor to the amount to which he would have been entitled under the refunding plan. The New Jersey Supreme Court at the suit of another creditor under these "stay" provisions (*Rippel* v. *Asbury Park*, 118 N. J. Law 45, 190 Atl. 489 (1937)), issued a corresponding writ for the benefit of all creditors except the one in the *Christmas* case.

Since the unquestionably constitutional powers of the federal courts under their discretion to withhold mandamus and the powers of the New Jersey courts under the stay provisions of the Act Concerning Municipal Finances are so similar, there must be something peculiar about the New Jersey law which makes the stay provisions unconstitutional, if they are unconstitutional. We must therefore examine the New Jersey law.

The New Jersey Act Concerning Municipal Finances is an attempt of that state to apply to the insolvency of municipalities the three elements of the equity receivership of a public service corporation, first, putting someone in control of the management of the property, second, concerted action in behalf of all creditors aided by a prohibition of destructive action by individual creditors asking preferences, and, third, a ratable realization by the creditors of that which the debtor can pay through settlement binding upon all.

The *first* element is supplied by creating the Municipal Finance Commission to supervise the current affairs of insolvent municipalities when the New Jersey Supreme Court has made a finding of insolvency.

It is these stay provisions of the Act which furnish the *second* element of the equity receivership, concerted action in respect of all creditors and a prohibition of destructive action by individual creditors seeking preferences.

The Act attempts to supply the *third* element of the equity receivership, the settlement binding upon all, by per-

mitting the New Jersey Supreme Court on petition of creditors of an insolvent municipality to make effective a plan for the readjustment of its indebtedness which has the approval of 85% of the creditors and the Commission, provided that it does not result in the reduction of the principal of the indebtedness of the municipality. These composition provisions have not yet been held constitutional and are not of as much importance as at the time of their passage in view of the subsequent adoption and upholding of the second Federal Municipal Bankruptcy Act.

The stay provisions remain of enormous importance, however, in view of the fact that the stays under the Federal Municipal Bankruptcy Act can be put in force only after 51% of the creditors have agreed upon a plan. It is extremely difficult to get together the 51% necessary if some of their fellows are engaged in a race of diligence for immediate payment of their claims. These statutory stays of the New Jersey state court are still valuable in furnishing exactly the protection pending the arrangement of a composition by constructively minded creditors, as was given by the exercise of discretion to withhold mandamus in the federal courts in *Asbury Park* v. *Christmas*.

The plaintiff below grounded its claim that the stay provisions were unconstitutional as applied in the New Jersey courts by saying that under the New Jersey state law existing at the time of the purchase of the plaintiff's bonds, mandamus was not a discretionary remedy and there was therefore a constitutional right of "every man for himself". Whatever support there may be for this claim in the language of the case cited by the plaintiff, *Rahway* v. *Munday*, 44 N. J. Law 395 (1882) rests upon its citation of the decision of this court in *City of Galena* v. *Amy*, 5 Wall. 705 (1866). It was not until after the New Jersey courts had adopted the language of the *Galena* case to the effect that the rights of creditors were absolute that this Court established the power of the federal courts by exercise of discretion in mandamus cases to spread the tax levy over a number of years instead of imposing it all at once as

required by the state statutes (*East St. Louis* v. *Amy*, 120 U. S. 600 (1887)).

Moreover, the statement in *Rahway* v. *Munday* was made before the decision of the Court of Errors and Appeals in *Vanderpoel* v. *Borough of Mt. Ephraim*, 111 N. J. Law 423, 168 Atl. 575 (1933), in which the highest court of New Jersey adopted the modern doctrine that municipal creditors rank *pari passu* in the case of insolvency.

Under this principle that no creditor has a right to a preference over his fellows, the stay provisions, when they substitute concerted action for individual action, are taking nothing away from existing creditors' remedies. It was on that ground that one of the two concurring opinions went in *Hourigan* v. *North Bergen Township* (113 N. J. Law 143, 172 Atl. 193, concurring opinion 172 Atl. 785, *supra*) the case which upheld the constitutionality of the stays in New Jersey. The other concurring opinion went on the ground that the statute was within the emergency powers of the Legislature, expressly stating that it was unnecessary to decide whether under other circumstances there would have been an impairment of the obligation of a contract.

Even were it not for the doctrine of the equality of creditors in cases of municipal insolvency, a statute which substitutes a remedy on behalf of all creditors for an individual creditor's absolute right is constitutional (*Pittsburg Steel Company* v. *Baltimore Equitable Society*, 226 U. S. 455 (1912)).

The other concurring opinion in the *Hourigan* case which upheld the constitutionality of the Act upon the ground of emergency was also correct in its law. The Act in Section 405 declares that it is intended by the Legislature to meet the public emergency arising from a default in the payment of municipal obligations and the resulting impairment of public credit. The testimony was that at the time of the passage of the Act more than one-third of the municipalities in New Jersey were in default, and at the time of the submission of the case between sixty and seventy were still in default, among which were the City of Atlantic

City, the City of Asbury Park, and the Township of North Bergen, a municipality with a population of 40,000.

The Act is not open to the objection that it is unconstitutional because it does not fix a time when the stays shall cease to be effective. The *Hourigan* case met this argument by citing decisions of this Court, including *Home Building and Loan Association* v. *Blaisdell*, 290 U. S. 398 (1934), to the effect that the operation of a statute imposing a stay to meet an emergency could in no event outlast the emergency.

This Court later in *W. B. Worthen Co.* v. *Thomas*, 292 U. S. 426 (1934), stated that the rule in the *Blaisdell* case applied only where the legislation was limited to the emergency and set up conditions apposite to emergency relief.

The Act Concerning Municipal Finances originally met the latter test by providing that the stays were applicable only in municipalities whose insolvency had required supervision of the Commission. It now meets the former test in view of its Section 405 which declares that the Act is intended by the Legislature to meet the emergency, coupled with Section 355, which has since been adopted, and which empowers the court upon application of any creditor to vacate, modify or restrict any statutory stay contained in the article. A like discretion conferred upon the courts by the second Frazier-Lemke Act had great weight in the determination that the second act was constitutional when the first had been held unconstitutional (*Wright* v. *Vinton Branch*, 300 U. S. 440, 460-464 (1937); *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555 (1935)).

If by any chance the decision below was based upon a construction of the New Jersey Act making the stays directly applicable to the federal courts, that construction was wrong in view of the obvious unconstitutionality of any such provision, coupled with the principle that a statute will not be construed in such a way as to make it unconstitutional if any other construction is open.

Summary of Point I-B that the enumeration of the statutes which govern the manner of the plaintiff's enforcement of its execution was incomplete.

The decree below contains what is in substance an enumeration of the various statutes as to the enforcement of the rights of municipal creditors which were in existence at the time of the purchase of the plaintiff's bonds. The decree declares that the plaintiff's judgment in the district court should be enforced in accordance with what was known as the Execution Act, and that the Execution Act was not repealed by the Tax Act of 1918. The Execution Act provides that a judgment creditor shall serve his execution upon the assessors of the municipality who shall add its amount to the tax levy while the Tax Act requires that the judgment creditor shall serve his execution on the County Tax Board, which shall add the amount to the municipal tax levy. The two statutes simply cannot co-exist and this has been conceded by counsel for the plaintiff in other litigation. The declaration in this respect must therefore be modified so as to make it clear that the Tax Act where inconsistent with the Execution Act covers the enforcement of the plaintiff's execution. It is submitted, however, that the Tax Act completely repeals the Execution Act and that it was the only statute fixing the plaintiff's statutory rights at the time of the purchase of the bonds.

Summary of Point II that the court erred in deciding against the right of the municipality to accept bonds in settlement of taxes.

At the time that the plaintiff purchased its bonds, municipalities were permitted to compromise the amounts of taxes due and owing in any case where the amount due was greater than the value of the property on which it was levied. (1928 N. J. Laws, ch. 123.) Thereafter Section 212 of the Act Concerning Municipal Finances was passed providing that the governing body of any municipality where the Commission was functioning could compromise *any*

taxes, except that no claims in excess of $500. should be compromised without the consent of the Commission. The municipality when under the supervision of the Commission in several cases accepted bonds in payment of taxes with the consent of the Commission which was required in view of the fact that more than $500. was involved. The plaintiff did not prove that this was done in any case where the amount of the taxes did not exceed the value of the property. On the contrary, the evidence indicated that these compromises were made only in cases where it would have been impossible to collect the full amount of the taxes. The compromises were made under a rule that bonds could be used only to pay back taxes and current taxes must be paid in cash. The net effect was that property was brought back upon the tax rolls which had theretofore failed to pay taxes and current taxes were realized which would otherwise have been lost.

While the practice of acceptance of bonds in payment of taxes might be so abused as to constitute an invasion of the constitutional rights of the remaining bondholders, no such case was made out below.

At the time of the hearing below, the Municipal Finance Commission had adopted a policy of refusing to approve tax settlements in any cases where any bondholders objected, and all compromises in the Borough of Runnemede to which the Commission had theretofore given its consent had been completed.

Summary of Point III that the Three-Judge Court was without jurisdiction because no substantial case was made for an injunction against state officers in the enforcement of a state statute.

A. As to the Jurisdiction of the Three-Judge Court with Respect to the Stay Provisions.

Section 266 of the Judicial Code provides in substance that no interlocutory or following final injunction suspending or restraining the enforcement, operation or execution

of a statute of a state by restraining the action of an officer of such state in the enforcement or execution of such statute upon the ground of the unconstitutionality of such statute shall be issued except after a hearing by three judges.

It is not enough to give the three-judge court jurisdiction that the plaintiff make an empty prayer in the language of the statute. Unless a substantial question is presented, the three-judge court is without jurisdiction, and if it has taken jurisdiction and issued the injunction, this Court will reverse its decree. (*Gully* v. *Interstate Natural Gas Company*, 292 U. S. 16 (1934)).

The defendants moved below to remit the case to a single district judge but the three-judge court retained and decided the case.

In so far as the stay provisions are concerned, we submit with great respect that there never was the remotest possibility that the plaintiff would be entitled to an injunction against state officers in this case. The only state officers who are defendants are members of the Municipal Finance Commission. They have no power under the statute to execute or enforce or relax the stays complained of. So far as an application for an injunction against the enforcement of the stays is concerned, the members of the Commission are misjoined as defendants. They are not even proper parties.

The injunction awarded by the court below against the Commission's functioning to any extent that "may be inconsistent with the right of the complainant to enforce in the manner herein stated executions to be issued in this court" has no substance to act upon because the Municipal Finance Commission has no statutory power to function in any way inconsistent with such a right.

It is true that in words the statute puts the stays into existence "whenever the Municipal Finance Commission shall function in any municipality", so that one who dealt only with words and not with substance might say that if the Commission did not carry on any of its functions within the municipality the stays would fall, but the court below provided in its injunction, as it was bound to, that it was

without prejudice "to any of the powers or duties of the Municipal Finance Commission under the Municipal Finance Commission Act except as the stays therein contained affect the right of the complainant to enforce its judgment" (R. 96). The Commission is therefore still properly functioning in the municipality and there is no basis even for the verbal argument.

Even if the stays were unconstitutional and cessation to function would *ipso facto* vacate them, that would not give the court jurisdiction to enjoin the activities of the Commission, constitutional and beneficial in themselves, which go to make up its functioning.

As there was no substantial question as to the liability of state officers to an injunction, the three-judge court not only lacked jurisdiction to entertain the application for the injunction but also lacked jurisdiction to entertain the incidental application for a declaratory judgment.

B. Summary as to the Jurisdiction of the Three-Judge Court with Respect to Provisions for Acceptance of Bonds in Payment of Taxes.

This branch of the relief requested comes a little nearer to substance than the preceding one because the members of the Municipal Finance Commission would be proper parties to an injunction against the acceptance of bonds in payment of taxes in view of the fact that their consent is necessary in cases where more than $500. is involved. (Act Concerning Municipal Finances, Sec. 212.) They are, however, parties so highly unnecessary that there joinder is clearly colorable for the purpose of ousting the one-judge district court of jurisdiction.

No state of facts can be supposed under which the plaintiff would be entitled to an injunction against the Commission's consenting to the compromise where it would not also be entitled to an injunction against the tax collector's consummating the compromise. The tax collector cannot make the compromise without directions from the borough council, but the borough council which makes the compromise

is omitted, while the Municipal Finance Commission which, at most, can consent to it, is joined.

Mere nominal joinder of state officials in a case where the substantial relief is an injunction against local officials does not require the convening of a three-judge court. (*Pleasant* v. *Missouri-Kansas-Texas Ry.*, 66 F. 2d 842 (C. C. A. 10, 1933), *cert.* denied 291 U. S. 659 (1934)).

In matters involving diversity of citizenship, the joinder of unnecessary parties is disregarded. (*Rogers* v. *Penobscot Mining Company*, 154 Fed. 606 (C. C. A. 8, 1907); *Salem Trust Company* v. *Manufacturers' Finance Co.*, 264 U. S. 182, 190 (1924)). We submit that the same rule should apply here.

As there was no substantial reason for joining state officers in the application for the injunction against the acceptance of bonds in payment of taxes, the three-judge court not only lacked jurisdiction to entertain the application for an injunction against the state officers but also lacked jurisdiction to entertain the application for the same injunction against local officers and the incidental application for a declaratory judgment.

POINT I.

The court erred in rendering the declaratory judgment that the stay provisions of the Act Concerning Municipal Finances are unconstitutional and in issuing the injunction based thereon.

A. In general.

a. The effect of the decision below.

The court's sentence on this branch of the case is somewhat delphic in character. The stay provisions are held unconstitutional "in so far as they affect the right of the complainant to enforce its judgment obtained and entered (or to be obtained and entered) in this Court" (R. 96, parenthetical matter from R. 99). The Municipal Finance

Commission is enjoined from "functioning in the Borough of Runnemede, New Jersey, to the extent that such functioning may be inconsistent with the right of the complainant to enforce its execution (or executions to be issued in this Court) * * *, but without prejudice to any of the powers or duties of the Municipal Finance Commission under the Municipal Finance Commission Act except as the stays therein contained affect the right of the complainant to enforce its judgment" (R. 96, parenthetical matter from R. 99).

The only way that we can think of in which the stay provisions might affect the right of the complainant to enforce a judgment in the federal court would be by the voluntary adoption of those stay provisions as a matter of comity between the United States of America and the State of New Jersey. The Act Concerning Municipal Finances does not purport to bind the federal courts.

There is no way that we can think of in which the functioning of the Municipal Finance Commission in the Borough of Runnemede may be inconsistent with the right of the plaintiff to enforce its execution in this Court.

Thus, if we pay strict heed to the words qualifying the declaratory judgment and to the words qualifying the injunction, nothing seems to have been determined and nothing seems to have been enjoined. However, the State of New Jersey cannot remain passive in the face of a statement of a court of the United States that one of its statutes is unconstitutional, and this appeal is therefore being prosecuted.

The nature of these stays is this. Whenever a municipality has been brought under the supervision of the Municipal Finance Commission, the Article on Remedies, being Sections 351-355, inclusive, of the New Jersey Act Concerning Municipal Finances (Chapter 340 of the Laws of 1931, quoted in full in the Appendix; *infra*, pp. 107-110), stays executions (Sec. 351), stays mandamus proceedings except those brought for the benefit of all creditors (Sec.

352), and stays proceedings for the distribution of funds pending a proceeding for the determination of the ownership thereof (Sec. 354). All of these stays are subject to being vacated, modified or restricted by the court upon the application of any creditor upon notice to the municipality and to the Commission (Sec. 355). The net result of these provisions is to prevent the use of the process of the New Jersey courts as a means of obtaining preferences for individual creditors and to empower the New Jersey courts to use their process for the benefit of all creditors equally and ratably.

These stays have been held constitutional by the New Jersey Court of Errors and Appeals, the highest court of that state, in *Hourigan* v. *North Bergen Township* (113 N. J. Law, 143, 172 Atl. 193, concurring opinion 172 Atl. 785 (1934)). The federal courts under their discretionary jurisdiction in mandamus, and without the benefit of any such statute, have powers to withhold relief which are at least as broad as those given by the statute to the New Jersey courts.

This rule of law of the federal courts was applied by the Circuit Court of Appeals for the Third Circuit in a mandamus case where the present counsel for the plaintiff was counsel for the relators, *City of Asbury Park* v. *Christmas*, 78 F. 2d 1003 (C. C. A. 3, 1935) *cert.* denied 296 U. S. 624 (1935). The entire opinion reads as follows:

> "BUFFINGTON, Circuit Judge.
>
> "Assuming for present purposes the power of the court below in ordinary cases to issue a writ of mandamus upon a municipality to aid a judgment creditor in enforcing such judgment, it still remains the law, as stated by the Supreme Court of the United States in Duncan Townsite Co. *v.* Lane, 245 U. S. 308, 311, 38 S. Ct. 99, 101, 62 L. Ed. 309, that: 'Mandamus is an extraordinary remedial process which is awarded, not as a matter of right, but in the exercise of a sound judicial discretion. It issues to remedy a wrong, not to promote one; to compel the performance of a duty which ought to be performed, not to

> direct an act which will work a public or private mischief or will be within the strict letter of the law but in disregard of its spirit.'
>
> "After due consideration, we are of opinion that sound judicial discretion does not warrant the exercise of such power at this time. In view of the efforts that are being made—we assume in good faith—by this municipality to provide to the limit of its power for the equality of treatment to all bondholders, we vacate the mandamus order granted, but direct the court to retain jurisdiction of the petition for the present."

As appears from the record in *Asbury Park* v. *Christmas*, *supra*, the mandamus order which the Circuit Court of Appeals vacated, required the payment of the relators' judgment of $1,418,104.63 in equal parts over each of the next ten years.

Subsequent history of the *Asbury Park* litigation furnishes a good example of the beneficent results which may be attained by cooperation between the federal courts, armed with their discretion in mandamus, a body such as a municipal finance commission, armed with its statistical facilities, and state courts, armed, as are the New Jersey courts, with a statute like the Act Concerning Municipal Finances. That history appears in the opinion in the case of *Rippel* v. *Asbury Park* (118 N. J. Law 45, 190 Atl. 489 (1937)).

It appears from that opinion that after the decision of the Circuit Court of Appeals in *Asbury Park* v. *Christmas*, *supra*, the Municipal Finance Commission in accordance with Section 201 of the Act Concerning Municipal Finances (*infra*, p. 93) formulated and certified to the governing body of the municipality resolutions providing for the refunding of its indebtedness by the issuance of bonds under a plan calling for a debt service levy in the year 1937 and each year thereafter sufficient to render an actual annual yield of $630,000. Thereupon the United States District Court for the District of New Jersey on December 29, 1936

when the *Christmas* case came back to it, granted a peremptory writ of mandamus to compel an annual tax levy in the sum of $87,381., the non-resident relators' proportion share of the yearly debt service levy thus proposed by the Finance Commission. Thereafter the Commission filed a petition in the New Jersey courts praying for a mandamus directing the municipality to make an additional annual tax levy of $542,619., the balance of the debt service, invoking the authority conferred by Section 352 of the Act Concerning Municipal Finances, one of the "stay" provisions which authorizes the Commission to institute mandamus or other appropriate proceedings for the payment of the principal or interest of indebtedness found to be outstanding. The city resisted the imposition of the terms of the Commission's refinancing plan and objected to the amount fixed for debt service as excessive. The State Supreme Court, however, as the United States District Court had done, awarded a mandamus corresponding within the penny to the refunding plan prepared by the Commission, Justice Heher saying as follows (pp. 48-49):

> "The statutory scheme was designed to secure, through the agency of the finance commission, a formula for liquidation, as speedily as may be reasonably possible, of the obligations in default. The commission is charged with the duty of attaining economic stability, without a cessation of essential municipal function, through a solvent that will also provide to the unsatisfied creditor every reasonable remedy for the enforcement of his contract. Considerations of public policy, grounded in a sound economy, ordain that the taxing power shall be reasonably used. Its unbridled exercise ordinarily frustrates the ultimate purpose, to say nothing of the hardship and loss inflicted upon the taxpayer, and pushing it to the extreme in an attempt to raise the moneys necessary for the satisfaction of a relatively large indebtedness ofttimes renders the remedy inefficacious, as well as subversive of the public interest. Such is plainly the genius of the statute, enacted as an emergency measure. A departure from this prin-

ciple to the detriment of the creditors would clearly infringe the constitutional guaranties against impairment of the obligation of their contracts.

"And so, it is the duty of this court, in the circumstances, to award *mandamus* for the enforcement of these contracts. *See Hourigan* v. *North Bergen Township*, 113 N. J. L. 143.

"In respect of the *quantum* of the levy, we are of opinion that the finance commission has reasonably measured the ability of the municipality to liquidate its obligations. It is the result of a long, painstaking and disinterested study of its financial problems; and we find nothing in the proofs to justify the claim of exaggeration.

"Moreover, the award of a *mandamus* for the sum requested by the commission will serve the essential statutory policy of equality between creditors of the same class. It puts the resident and non-resident creditors upon the same footing. It is of no consequence that the former's claims have not been reduced to judgment. Section 352 of the statute, supra, expressly so provides. Parity is the manifest design of this provision."

For aught that appears in the decree below, the New Jersey Supreme Court may lawfully continue to resist claims for preferences against embarrassed municipalities and to enforce petitions for omnibus tax levies, and the federal district courts may continue to exercise their discretion in mandamus by refusing the aid of the writ to preferential claims and by issuing the writ in such amount and in such form as will correspond with the constructive plans of a state administrative agency and the decree of the state court based upon those plans. Circuit Judge Davis, who is one of the members of the Circuit Court of Appeals which enunciated the principle of discretion in mandamus in the *Christmas* case, and District Judge Forman, who thereupon exercised his discretion in cooperation with the Municipal Finance Commission, were two of the members of the three-judge court below which held the stay

unconstitutional. If their views had changed since their decisions in the *Asbury Park* case, in fairness to the public they would not have let the matter pass *sub silentio* in deciding the case at bar.

While we are justified in assuming that their views are not inconsistent with those expressed in the *Christmas* case, we do not know what the decision below means. We cannot assign any effect to the holding that the stay provisions of the Act Concerning Municipal Finances are unconstitutional in so far as they affect the right of the plaintiff to enforce in this court a judgment on its bonds. They do not purport to have any direct effect in the federal courts, and we concede now, as we conceded below, that the legislature could not, if it tried, give them any such direct effect.

On the other hand, the statement in the decree that the stays are unconstitutional seriously interferes with the usefulness of the statute, and we must therefore develop some interpretation of the decree in order that we may attack it. Such a procedure is hardly distinguishable from setting up a straw man and knocking him down, but we have no choice. Following this course we shall proceed upon the theory that what the court below did was to hold (although expressly limiting its decision to the effect of the stays in the United States District Court) that the stays as applied in the only place where they are directly applicable, the state courts, are unconstitutional, and that since they are unconstitutional in the state courts, it would be unconstitutional for the federal courts to enforce them as a matter of comity.

We do not see how this question could ever arise unless the United States District Court for the District of New Jersey deliberately set out to render an invalid judgment, for it could accomplish by its constitutional discretion in mandamus everything that could be accomplished by an unconstitutional adoption of the New Jersey statutory stays as a matter of comity. The court has spoken, however, and we shall proceed to a discussion of the constitutionality of the stays as applied in the New Jersey state courts.

b. *The three-fold purpose and the provisions of the New Jersey Act Concerning Municipal Finances.*

The New Jersey Act Concerning Municipal Finances is an attempt of that state to apply to the insolvency of municipalities the principles which have made the equity receivership a solution of the problem of the insolvency of public service corporations.* In *Hourigan* v. *North Bergen Township* (113 N. J. Law 143, 172 Atl. 193, *supra*), Justice Heher at page 149 referred to the similarity of the position of the Commission to that of a receiver. He said:

> "The act confers upon the finance commission in respect of the municipality's financial affairs powers somewhat akin to those exercised by receivers of insolvent corporations. It was designed to give support to the tottering municipalities, and to prevent complete collapse and total paralysis of function. It embodies wise and useful provisions tending to restrain and check the reckless levy of taxes, and to promote economy and the orderly conduct of the municipality's affairs. Its primary purpose is to keep intact the corporate structure, and to continue municipal function until rehabilitation can be affected."

The three elements of the equity receivership which the New Jersey Legislature attempted to embody in the Act were, first, putting someone in control of the management of the property, second, concerted action in behalf of the creditors, aided by a prohibition of destructive action by individual creditors seeking preferences, and, third, a workable realization by the creditors of that which the debtor can pay through a settlement binding upon all.

All three of these elements are as necessary in the case of municipal insolvencies as in the case of private insolvencies.

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* For discussions of state legislation dealing with insolvent municipalities and particular reference to the New Jersey plan, see "Comity by the Federal Courts to State Statutory Receiverships of Defaulting Municipalities", 45 Yale Law Journal 702; "Municipal Debt Adjustment and the Supreme Court", 46 Yale Law Journal 199, 212; "Legal Problems of Financially Embarrassed Municipalities", 38 Virginia Law Review 39; and 13 New York University Law Quarterly 454 (1936).

cies. First, if there is no outside management or control of the insolvent municipality the creditors cannot get impartial information or impartial treatment during the period of negotiation. Second, if individual bondholders are permitted to bring individual mandamus proceedings the going value of the municipality will be seriously reduced and there will be no hope for a settlement short of a time when the parties have done each other so much harm that all are willing to get together on a reasonable settlement. And, third, if there is no way of making the settlement binding upon all creditors alike, it will be no settlement at all.

1. Control of Current Finances.

The first element of the equity receivership concept, outside control of the current finances, is supplied by the creation of the Municipal Finance Commission. Under Section 101 of the Act (*infra*, p. 91), whenever there is proof before a justice of the Supreme Court from any petition filed by a bondholder that a municipality has defaulted for over sixty days on its bonds, the justice is empowered to make an investigation, and upon a finding of the existence of such a default, the Municipal Finance Commission, consisting of the Attorney General, the State Tax Commissioner and the Commissioner of Municipal Accounts, thereafter shall have and exercise with respect to such municipality the powers and duties prescribed by the Act. Another way of bringing the Commission into existence with respect to any particular municipality is by filing with a justice of the Supreme Court a certified copy of a resolution adopted by the governing body of the municipality reciting its inability to meet its obligations. Thereupon the justice after investigation may make such a finding. The Commission thereupon comes into existence with respect to the municipality.

By Section 209 (*infra*, p. 96), the consent of the Commission is required to any action creating any obligation or indebtedness of the municipality except tax anticipation

obligations for the current year, and the governing body cannot without the consent of the Commission include in any appropriation amounts for local expenditures in excess of the like amounts for the preceding year except debt service appropriations. No claims can be paid by the municipality until the Commission's auditor shall have certified that they are within the proper appropriations and that there is or will be sufficient ready funds for such payment.

By Section 212 (*infra*, p. 102), the consent of the Commission is required for the compromise of delinquent taxes and assessments in excess of $500. By Section 213 (*infra*, p. 102), such consent is required for the sale of tax sale certificates or other property in the municipality. By Section 302-a (*infra*, p. 105) all instruments for the payment of funds of the municipality must be countersigned by the auditor of the Commission. By Section 303 (*infra*, p. 106) the Commission is entitled to notice of all appeals from taxation affecting the municipality, and is entitled to be represented thereon. By Section 306 (*infra*, p. 106) the Commission is empowered to require revision of the municipal assessments. By a supplement to the Act added by Chapter 194 of the Laws of 1935 (*infra*, p. 118) the Commission is empowered to approve agreements between the municipality and the taxpayer providing for payment of assessments for benefits for local improvements in five installments instead of all at once.

By Section 1 of a supplement to the Act added by Chapter 292 of the Laws of 1935 (*infra*, p. 121), the Commission's auditor may be given by the Commission authority to recommend the tentative annual budget to the governing body, to review all contracts prior to their execution and their authorization by the governing body, to make recommendations concerning all capital improvements, to attend all meetings of the governing body with the right to take part in discussions, to investigate the affairs of any department, officer or employee of the municipality and to make

recommendations with respect to all such matters, both to the municipality and to the Commission. By Section 3 of that supplement the Commission is required to certify by resolution to the governing body any failure on the part of an officer or employee of the municipality to perform any duty imposed upon such officer or employee by law, and unless the employee performs the same, the municipality is required to remove or suspend such employee, and in that event, the municipality is required to appoint a substitute satisfactory to the Commission. By Section 4 the Commission is empowered to require the appointment of special collectors of delinquent taxes satisfactory to it. By Section 5 the Commission is empowered to require that the proceeds of any taxes shall be applied equally and ratably to the purposes for which the taxes were levied.

With those powers, the Commission is enabled to procure accurate information about the municipal finances for the use of the creditors, and by supervision of expenditures and tax collection enforcement to afford to some extent the required concrete demonstration of the municipality's tax paying capacity. So much for the first element of the equity receivership—outside control of the debtor.

2. Abolition of the Race of Diligence.

The second element of the equity receivership, concerted action in respect of all creditors, is the one involved in the stay provisions. Concerted action on behalf of all creditors is impossible without a prohibition of any action by individual creditors seeking preferences, for it has been that sort of harassing and fruitless litigation which has in the past done the most damage, not merely to the municipality, but to the interests of the creditors themselves. Creditors of private corporations long ago came to an appreciation of the futility of the uncontrolled use of the judicial process in the attempt of each creditor to realize first on his claim, but it is only since municipal obligations have become more widely distributed among investors that the majority of municipal creditors have come to a similar appreciation.

With the creditors obtaining court orders prying off pieces of the taxing power for their separate benefit, with attempts to levy execution on municipal property, and with bickering over what constitute free funds and what essential governmental property, the operation of a municipality is rendered difficult and creditors and municipal officials get irritated with each other. Under these conditions it is impossible for them to work out any plan under which the maximum amount which the municipality can pay to the creditors can be ascertained and paid over to them.

Where creditors have seen a competing creditor obtain payment in full by some adroit use of legal process, they are not in a frame of mind to consent to a postponement of their payments, and where municipal officials have found themselves collecting taxes to be applied in accordance with half a dozen court orders obtained by half a dozen different creditors, they have not been very willing to exert themselves to raise something over and above bare needs of operation of the city.

The first object in a program to rehabilitate an insolvent municipality is, therefore, to secure a period of peace during which the factors affecting the merits of a reorganization may be considered by the municipality and its creditors. The way to obtain that period of peace seems reasonably clear. State legislation should be adopted permitting any creditor or the state commission to institute proceedings to enforce the municipality's taxing power for the benefit of all the creditors. Provision may also be made to permit proceedings to determine the rights of creditors *inter sese* with regard to moneys available for debt service pending settlement. All proceedings for the benefit of individual creditors, as opposed to the whole group of creditors, should, except under extraordinary circumstances, be stayed. Such legislation furnishes to the municipality and to the creditors substantially the protection afforded private corporations and their creditors by an equity receivership which places the corporation's property in *custodia legis*.

That is just what the Act Concerning Municipal Finances has done by its Article III-A, entitled "Remedies", embodying Sections 351-355, inclusive (*infra* p. 107). By Section 351 (*infra* p. 107) whenever a municipality is under the supervision of the Municipal Finance Commission, no levy can be enforced against it without a special order of the Supreme Court after notice to the Commission. By Section 352 (*infra* p. 108) all mandamus proceedings for the assessment, levy or collection of taxes are stayed except that, first, the Supreme Court after notice to the Commission may authorize a creditor to bring a proceeding on behalf of all creditors to which all creditors and the Commission shall be parties, and except that, second, the Commission may bring and maintain such a proceeding for the collection of taxes for the payment of all of the municipality's indebtedness. By Section 353 (*infra* p. 109) the Commission is empowered to require the municipality to pay into designated banks taxes collected in excess of running expenses. By Section 354 (*infra* p. 109) actions or proceedings affecting the disposition of the funds of the municipality are stayed except that the municipality must apply on direction of the Commission, and a creditor may apply with the court's permission, to the Supreme Court to determine the application of funds among its creditors. In any such proceedings all creditors of the municipality are parties. Section 355 (*infra* p. 110) provides that upon the application of any creditor made upon notice to the municipality and the Commission, the Supreme Court may *vacate, modify or restrict any statutory stay* contained in the article.

It seems reasonably certain that these provisions give in the case of insolvent municipalities substantially that period of peace which permits the smooth functioning and final success of the ordinary equity receivership. But the question is not whether they are beneficial but whether they are constitutional. That is the question raised by this appeal and the question which will be discussed at the end of this point.

3. The Settlement Binding upon All.

By a supplement enacted by Chapter 331 of the Laws of 1933 (*infra* p. 113) it is provided that in the case of any municipality under the supervision of the Municipal Finance Commission, creditors may petition the Supreme Court for the approval of a plan of adjustment or composition of the claims of creditors. The municipality and the Commission must be made parties to the proceeding as well as all creditors. If the plan is approved by the Commission and by creditors representing 85% in amount of the indebtedness affected thereby, the Supreme Court may give its approval if it determines that the municipality is unable to pay its obligations in full, that the adjustment is measured by the capacity of the municipality to pay, that it is in the interest of all creditors affected thereby, and that it is not detrimental to other creditors of the municipality. Upon such approval the plan becomes binding upon all the creditors included therein. It is expressly provided that the Commission shall not approve any adjustment or composition which provides for the reduction in the principal amount of any outstanding notes or bonds of the municipality.

The constitutionality of the provisions making such a composition binding upon all of the creditors has not been tested, but there would seem to be a good chance of their being sustained on the same theory that this Court sustained the Canadian composition statute in *Canada Southern Ry.* v. *Gebhard* (109 U. S. 527 (1883), cited with approval in *Continental Illinois National Bank* v. *Chicago, R. I. & P. Ry.*, 294 U. S. 648 (1935)).

The importance of these composition provisions is not nearly so great as it was when they were first adopted in view of the passage and upholding of the second Federal Municipal Bankruptcy Act in the meantime. (*United States* v. *Bekins, et al.*, 304 U. S. 27 (1938)).

A supplement to the Act Concerning Municipal Finances contained in Chapter 190 of the Laws of 1935 (*infra* p. 117)

permits any municipality which is under the supervision of the Commission to take advantage of the Federal Municipal Bankruptcy Act provided the plan is approved by the Commission and provided that the plan does not involve the reduction in principal amount of any outstanding notes or bonds of the municipality.

c. *The Constitutionality of the Stay Provisions.*

While the composition provisions of the New Jersey Act Concerning Municipal Finances have thus lost some of their importance by reason of the upholding of the Federal Municipal Bankruptcy Act, the provisions for stays have gained in importance. Until 51% of the creditors of the municipality come into agreement and thus bring into play a provision of the Federal Municipal Bankruptcy Act (Title 11, U. S. C. Sec. 403-c, 50 Stat. 657) authorizing the issuance of ancillary injunctions against hostile creditors, such hostile creditors, so far as the Federal Act is concerned, have a free and untrammelled right to pursue a rule-or-ruin policy while their more constructively minded fellows are trying to get together the 51% necessary to end chaos by the rule of law. If even a very small group is bent upon obtaining a preference over fellow creditors, the others who have no such inclination by nature are nevertheless, from motives of self-preservation, forced into the position of bringing proceedings for their individual benefit.

Thus, the discretionary power of the federal courts to withhold writs of mandamus sustained in *Asbury Park* v. *Christmas*, 78 F. 2d 1003, *supra*, is a valuable supplement to the Federal Municipal Bankruptcy Act in the hands of a skillful and broad-minded district judge exercising his discretion in favor of a plan of composition which, he is satisfied, is fair and has been put forward in good faith. Such a judge is thus empowered to impose so far as the federal courts are concerned, the period of peace necessary for a majority of the creditors to get together and present their plan to the court.

The stay provisions of the New Jersey Act Concerning Municipal Finances permit a New Jersey Supreme Court judge to do precisely the same thing so far as the New Jersey courts are concerned.

There is a slight difference in that the federal judge himself imposes the stay by refusing to act unless he comes to the conclusion that justice requires the issuance of the writ of mandamus, while, in the case of proceedings against insolvent municipalities in the state courts, there is a statutory stay unless the court comes to the conclusion that justice requires the issuance of the writ of mandamus.

That, however, does not explain why a federal court, like the court below which exercises the power to suspend creditors' individual mandamus proceedings against insolvent municipalities, should have held unconstitutional a statute of the State of New Jersey which gives in effect the same power to the New Jersey courts. Judges who reached such liberal and constructive results in the *Asbury Park* case must have felt bound by some very positive rules of law to have reached the result below. No cases were cited so that we lack that clue.

Counsel for the plaintiff in the court below argued that under the New Jersey law, whatever might be the law of the federal courts, there was no discretion in the judicial exercise of municipal creditors' remedies, and since that was the law at the time the plaintiff purchased its bonds, it was unconstitutional for a subsequent statute to confer discretion upon the New Jersey courts.

Plaintiff below grounded its claim that there was no discretion in the enforcement of municipal creditors' remedies under the New Jersey state law upon the case of *Rahway* v. *Munday*, 44 N. J. Law 395, decided by the Court of Errors and Appeals in 1882.

The court in that case did say (p. 420):

> "The allowance of the writ of *mandamus* is certainly, in some cases, an act resting in judicial discretion, but such right of judgment does not embrace the

province of supervising legislative acts creating private rights, and of refusing, occasionally, to put them in force from motives of supposed expediency or public policy. It would be difficult to find any sanction in reason or in judicial decisions for such an exercise of judicial authority."

The New Jersey Court of Errors and Appeals in *Rahway* v. *Munday* was thus careful to state that the writ of mandamus was in some cases an act resting in judicial discretion. In so far as it held that New Jersey bondholders had a vested right in preferential payments which could not be tempered by the discretion in mandamus, the case rests upon *City of Galena* v. *Amy*, 5 Wall. 705 (1866) which the court cited on page 419. That case was decided by this court before the establishing of the discretion of the federal courts in mandamus to temper the rigor of the writ by spreading a tax levy to pay a judgment over a series of years instead of assessing it all at once as required by the statute. That doctrine has since gained complete acceptance in all of the federal courts. (*East St. Louis* v. *Amy*, 120 U. S. 600 (1887); *Deere* v. *Board of Commissioners of Rio Grande County*, 33 Fed. 823 (C. C. D. Colo., 1888); *United States* v. *City of Key West*, 78 Fed. 88 (C. C. A. 5, 1896); *City of Cleveland, Tenn.* v. *United States*, 166 Fed. 677 (C. C. A. 6, 1909); *Graham* v. *Quinlan*, 207 Fed. 268 (C. C. A. 6, 1913); *Perry* v. *Town of Samson*, 11 F. 2d 655 (D. C. M. D. Ala., 1926), aff'd. 17 F. 2d 1 (C. C. A. 5, 1927)).

Moreover the statement in *Rahway* v. *Munday* was made before the decision of the Court of Errors and Appeals of New Jersey in *Vanderpoel* v. *Borough of Mt. Ephraim*, 111 N. J. Law 423, 168 Atl. 575 (1933).

The *Vanderpoel* case is of immense importance because it represents an acceptance by the New Jersey Court of Errors and Appeals of the modern doctrine that municipal creditors rank *pari passu* in the case of insolvency. If *Rahway* v. *Munday* established the absolute right of a municipal creditor to a tax levy for himself alone, that right fell when the same court recognized that one creditor had

no right to a preference over his fellows. In the *Vanderpool* case the plaintiff recovered judgment upon defaulted bonds. Execution was then levied upon a savings and bond interest account of the borough. The Court of Errors and Appeals in vacating the levy said at page 424:

"The judgment creditor in this case was the holder of defaulted bonds; if he may seize funds which are to be devoted to the payment of bonds generally he secured by his vigilance an advantage over all other bondholders.

"Municipal credit has been established by the creation of sinking funds for the liquidation of debts when due. If such funds may be taken by one bondholder for his own advantage other bondholders must be delayed in the collection of their claims. The municipal credit must necessarily suffer if bondholders do not have equal rights in the funds created for the liquidation of their claims. We can find nothing in the Execution act which would give rise to the implication that such funds can be the subject of seizure at the suit of a judgment creditor, but if there is we still think that the result would be ruinous.

"All bondholders for whose satisfaction a fund was created have equal rights therein. Any other rule would result in one creditor having immediate satisfaction while another would be obliged to wait until, in the course of time, a collection of taxes could be made. Nothing would more surely impair municipal credit than the knowledge that before the law all bondholders were not given equal rights in the funds set aside for the liquidation of claims.

"It is essential to the beneficial exercise of granted powers that a municipality be able to secure advances upon its credit. Even though it failed in meeting its obligations when due because too much has been extended upon the hope that its inhabitants could earn money sufficient to pay taxes, still it is essential that the municipality deal justly with its creditors and preferences, however secured, are not to be so regarded.

"Construing the Execution act strictly as we must, we can find nothing in it which gives one creditor a

right to take public property in satisfaction of a judgment even though it be money, part of which may have been set aside to satisfy his claim."

It is true that the court in the *Vanderpoel* case was deal-g with an attempt to get a preferential payment out of fund then in existence rather than with an attempt to get preferential payment out of the general taxing power, but is plain from the court's language that it would regard an tempt to get a preferential payment out of the general xing power as an *a fortiori* case—"It is essential that the unicipality deal justly with its creditors and preferences *wever secured* are not to be so regarded"—"we can find thing in it (the Execution Act) which gives one creditor right to take public property in satisfaction of a judg-ent *even though* it be money, part of which may have been t aside to satisfy his claim."

The plaintiff in the court below cited *Hourigan* v. *North rgen Township*, 113 N. J. Law 143, 172 Atl. 193, concur-ng opinion 172 Atl. 785, *supra*, as repudiating this doctrine at creditors have a common law right to be protected ainst the obtaining of preferential payments from insol-nt municipalities. The case did nothing of the kind. In e Supreme Court (11 N. J. Misc. R. 194) a municipal judg-ent creditor was denied mandamus on the ground, among hers, that the granting of the writ in the particular case ould work confusion in the financial affairs of the munici-lity. In saying *obiter* that that was not a sufficient basis r withholding the writ, six judges of the Court of Errors d Appeals, in the course of their discussion of the con-ruction of the tax statute, cited *Rahway* v. *Munday*, 44 J. Law 395, *supra*, for the proposition that the statute ade no allowance for the pecuniary embarrassments or e insolvency of the corporation. Their opinion then pro-eded, saying (p. 147):

"We come now to a consideration of the constitu-tional questions raised."

The constitutional questions raised involved the constitutionality of the stays contained in the Act Concerning Municipal Finances. The court considered whether the Act Concerning Municipal Finances was valid in permanently and completely staying mandamus proceedings on behalf of individual creditors and remitting them to an application to the Supreme Court for leave to bring a mandamus proceeding on behalf of themselves and all others similarly situated. At that time the statute did not contain the present Section 355 (*infra*, p. 110) which authorizes the Supreme Court to relax the stay against the institution of individual mandamus proceedings.

In discussing those constitutional questions, *Rahway v. Munday* was not cited. Instead the opinion proceeded (p. 148):

> "Assuming, without deciding, that the statute, in this respect, lessens, in the constitutional sense, the efficacy of the means provided for the enforcement of the contract at the time it was made, it is nevertheless, for the reason to be stated, a valid exercise of the legislative power. It was adopted as an emergency measure."

These six judges thus voted to sustain the stay provisions of the Act Concerning Municipal Finances on the ground that, whether or not the stays impaired the obligation of the bondholders' contract, they were justified by the emergency, under the decision of this court in *Home Building and Loan Association* v. *Blaisdell*, 290 U. S. 398 (1934). Six judges voted that the stay provisions were unconstitutional, and the thirteenth, who held the balance of power, Mr. Justice Donges, voted to sustain the statute but filed a concurring opinion in which he justified it on the ground that the stays did not impair the obligation of the bondholders' contract. Thus, neither of the opinions in the case is the opinion of the court, but that of Mr. Justice Donges passed on a question which the six judges who voted with him left open, and we submit that the cogency of his arguments is such that his six associates would have follow

him had they not found it unnecessary to pass upon the question.

Mr. Justice Donges held (p. 154):

> "The statute under consideration does not take away the remedy, but affords the creditor an ample remedy, namely, recourse to the Supreme Court to compel payment."

The view of Mr. Justice Donges was thus that even though the Supreme Court had been deprived of jurisdiction to permit the prosecution of a mandamus proceeding by an individual creditor, the substitution of the right of the individual creditor to apply to the Supreme Court for leave to bring such a proceeding on behalf of himself and his fellow creditors gave him all that he was entitled to.

This conclusion of Mr. Justice Donges was the easier to reach because of the New Jersey doctrine, recently developed in *Vanderpoel* v. *Borough of Mt. Ephraim*, 111 N. J. Law 423, 168 Atl. 575, *supra*, that no creditor of an insolvent municipality has a right to obtain a preference.

Even in the case of a private corporation, however, where no such doctrine was available, this court upheld a very similar statute in *Pittsburg Steel Company* v. *Baltimore Equitable Society*, 226 U. S. 455 (1913).

In that case the Steel Company was a contract creditor of an insolvent Maryland corporation. The Equitable Society held stock of the insolvent corporation, the subscription for which had not been paid in full. The Steel Company sued the Equitable Society to recover the balance due on a stock subscription in February, at which time the action was maintainable under Maryland law. In April, however, a statute was enacted making the stockholders' liability an asset of the insolvent corporation, saving the rights of creditors at the date of the Act, but providing that the exclusive remedy, as against Maryland stockholders, should be an action in equity on behalf of all creditors who might come in. On the basis of this statute, the Steel Company's suit was dismissed, and the decision of the Mary-

land Court of Appeals sustaining the dismissal unanimously affirmed by this Court.

The only distinction that we can see between *Pittsburg Steel Company* v. *Baltimore Equitable Society* and the case at bar is that the liability of the Equitable Society was limited to the amount of the unpaid subscription. Once it paid that amount to the insolvent corporation or its receiver, or to any creditor, it was discharged; whereas the Borough of Runnemede, after paying appellee in full, would still remain liable to pay all its other creditors in full also. We do not believe that this distinction makes any difference. The taxing power in the case of an insolvent municipality has a practical limit just as the obligation of the stock subscriber had a legal limit.

It is to be noted that in both the *Hourigan* and the *Pittsburg Steel Company* cases the Legislature had completely abolished the creditors' right to proceed by and for himself. Under the existing state of the Act Concerning Municipal Finances, however, the position of the creditor is much like his position in the federal courts, i. e., that the court has jurisdiction to permit him to proceed but may refuse. The federal courts have made only a beginning of working out, as an alternative to this absolute refusal, permission to the creditor to proceed on behalf of himself and all others similarly situated. (*Carteret County* v. *Sovereign Camp, Woodmen of the World*, 78 F. 2d 337 (C. C. A. 4, 1935); *Groner* v. *U. S. ex rel. Snower*, 73 F. 2d 126 (C. C. A. 8, 1934)). That power is conferred upon the courts by statute, however, in the case of the Act Concerning Municipal Finances, and was exercised by the New Jersey Supreme Court in *Rippel* v. *Asbury Park*, 118 N. J. Law 45, 190 Atl. 489 (1937), *supra*. Unless and until a New Jersey court refuses to exercise that power, we cannot assume that it will be refused. It is settled that the federal courts may refuse individual mandamus altogether, even though they have no settled practice under which the creditor who has been refused may proceed on behalf of

himself and his fellows. That being so, it was surely constitutional for the Legislature to empower the New Jersey courts to refuse or to grant individual mandamus where the Legislature itself outlined the alternative procedure for the creditor to take on his own behalf and that of his fellows.

The other concurring opinion in *Hourigan* v. *North Bergen Township* (113 N. J. Law 143, 172 Atl. 193, *supra*), in which Justice Heher sustained the stay provisions as justified by the emergency finds ample support in the conditions proved to exist at the time of the hearing below. Section 405 of the Act (*infra*, p. 113) states its purpose as follows:

> "405. It is declared and enacted that this act is intended by the Legislature to meet the public emergency arising from a default in the payment of municipal obligations, and the resulting impairment of public credit, requiring intervention by the State to provide for the payment of existing obligations in such a way as to cause the least embarrassment to property owners as taxpayers; that this act is remedial in nature; and that the powers hereby granted shall be liberally construed."

The testimony was that the Commission had been called upon to supervise the affairs of twelve municipalities (R. 188). Between sixty and seventy municipalities were in default in the payment of principal and interest on their debt, and in 1931, when the Act was originally passed, as many as one-third of the municipalities of the state were in that condition. At the time of the hearing below, the City of Camden had just had a complete refunding of its obligations. There was a creditors' committee in the City of Newark which had entered into a standstill agreement, the City of Atlantic City had not yet completed its refunding, the City of Asbury Park was in default in the payment of its principal and interest, and the Township of North Bergen (with a population of 40,000) was in default. Camden County and Atlantic County had both been pretty

seriously in default but both had refunded their obligations (R. 149-150).

In the *Hourigan* case, it was objected that the Act was unconstitutional even under the emergency powers because the statute did not fix a time when the stays should cease to be effective. Justice Heher replied as follows (pp. 151-152):

> "But it is not requisite that the operation of the law be limited to a definite term. It is the actual existence of the emergency solely, and not the limitation of the law's operation to a prescribed period, that gives validity to this exercise of the reserve element of sovereignty called the police power. When the emergency ceases to exist, the operation of the statute will be arrested, even though the prescribed term of its operation may not then have expired. A law depending upon the existence of an emergency, or other certain state of facts, to uphold it, may cease to operate if the emergency ceases, or the facts change, even though valid when passed. It is always open to judicial inquiry whether the exigency still exists upon which the continued operation of the law depends. The operation of the statute itself could not validly outlast the emergency. *Home Building and Loan Association* v. *Blaisdell*, 290 U. S. 398; 54 Sup. Ct. 231; 78 L. Ed. 255; *Chastleton Corporation* v. *Sinclair*, 264 U. S. 543, 547; 44 Sup. Ct. 405; 68 L. Ed. 841."

In the *Chastleton* case, which Justice Heher cited, Mr. Justice Holmes said for this Court (pp. 547-548):

> "A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though valid when passed."

In the *Blaisdell* case, likewise cited by Justice Heher, Mr. Chief Justice Hughes pointed out for this Court at page 447 that the period of the stay fixed by the statute in that case could be reduced "by the order of the court

under the statute, in case of a change in circumstances, and the operation of the statute itself could not validly outlast the emergency or be so extended as virtually to destroy the contracts."

After the Act Concerning Municipal Finances had been upheld in the *Hourigan* case, Mr. Chief Justice Hughes for this Court in *W. B. Worthen Co.* v. *Thomas*, 292 U. S. 426 (1934), called attention to the fact that the rule in the *Blaisdell* case applied only to instances where the legislation was limited to the emergency and set up conditions apposite to emergency relief.

The Act Concerning Municipal Finances always set up conditions apposite to emergency relief in that the stays were effective only in municipalities which on account of insolvency had required the supervision of the Commission.

The New Jersey legislature has, since the decision of this court in *Worthen Co.* v. *Thomas*, in effect limited the legislation to the emergency, by adding Chapter 50 of the Laws of 1936 to the Act Concerning Municipal Finances. This added provision, when read in connection with Section 405 declaring the Act to be intended to meet an emergency, permits the court to limit the legislation to the emergency. The provision added is Section 355 which reads as follows:

> "355. Upon the application of any creditor made upon notice to the municipality and the commission, the Supreme Court may vacate, modify or restrict any statutory stay contained in this article."

It certainly cannot be presumed for the purpose of holding the New Jersey Act unconstitutional that the court which has the power to proceed in spite of the stays will refuse to exercise this power when the emergency ceases to exist.

A like discretion conferred upon the courts by the second Frazier-Lemke Act had great weight in the opinion of this Court in rendering the second act constitutional instead of unconstitutional like the first. (*Wright* v. *Vinton Branch*,

300 U. S. 440, 460-464 (1937); *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555 (1935)).

Perhaps all of this discussion of the New Jersey law has been beside the point as plaintiff's counsel see it. What we have been meeting is an assumed contention, assumed to have been accepted by the court below, that the statute as applied in the New Jersey courts is unconstitutional, and that it would therefore be unconstitutional to apply it in the federal courts as a matter of comity. We feel that we have demonstrated that the statute is constitutional as applicable in the New Jersey state courts and have thus met the assumed contention. It may be, however, that the plaintiff and the court below, in spite of concessions to the contrary, construe the stays as directly applicable to proceedings in the federal courts and hold that as so applied, they are unconstitutional.

We meet that by pointing out that courts will not deliberately construe a statute so as to make it unconstitutional where there is room, as here, to construe it so as to eliminate the question. (*Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531 (1914)).

Therefore, if the plaintiff in this Court takes the position that the act is only unconstitutional because of its direct application to the federal courts, this Court should hold in its opinion that the statute does not apply to the federal courts and reverse the judgment below which declares the statute unconstitutional.

B. The enumeration of the statutes which govern the manner of the plaintiff's enforcement of its execution was erroneous.

The court below (R. 96) not only issued an injunction against the Commission's functioning in the borough "to the extent that such functioning may be inconsistent with the right of the complainant to enforce its execution in the manner herein stated" and made a declaration that the stay provisions of the Act Concerning Municipal Finances

'are unconstitutional and void insofar as they affect the ight of the complainant to enforce its judgment obtained nd entered in this Court", but also made a declaration in esponse to a prayer of the plaintiff as to what the manner f enforcement should be.

The court's decree on that subject was as follows (R. 6, 97):

> "IV. In response to subdivision F of the prayers of Count One of the bill of complaint which prays that this Court hold, adjudge and declare that complainant's rights to compel a levy and collection of taxes for the satisfaction of its judgment are governed solely by Section 35 of the Execution Act of New Jersey, being 2 Compiled Statutes of New Jersey, page 2256, and Section 237 of the School Law of New Jersey, being 4 Compiled Statutes of New Jersey, page 4804.
>
> "It is Ordered, Adjudged and Decreed that the enforcement of complainant's judgment shall be in accordance with the laws existing in the State of New Jersey at the time of the issuance and sale of the bonds in question, and the laws applicable are Section 35 of the Execution Act (2 Comp. Stats. p. 2256), and Section 237 of the School Law (4 Comp. Stats. p. 4804), and that the said sections were not repealed by the provisions of the Tax Act of 1918."

Thus, in response to the plaintiff's request for a declaration that its rights were *solely* governed by Section 35 of the Execution Act and Section 237 of the School Law, the court replied that the enforcement of the judgment should be in accordance with the laws existing in the State of New Jersey at the time of the issuance and sale of the bonds and that the laws applicable were Section 35 of the Execution Act and Section 237 of the School Law, and that said sections were not repealed by the Tax Act of 1918 (N. J. Laws of 1918, Ch. 236, § 505). This was in the face of the fact that counsel for the plaintiff preliminary to this litigation had asked for action under the Tax Act (Ex. 6 to Stipulation, R. 125-126).

Counsel for the plaintiff in other litigation, *U. S. ex rel. Barker* v. *Borough of Fort Lee* (No. 6840, October Term, 1938, C. C. A. 3rd Circuit), conceded that the rights of the judgment creditor are governed to some extent by the Tax Act of 1918 and construe the decree of the court below as so holding. Their brief in that case reads:

> "Section 505 of the Tax Act (P. L. 1918, c. 236, p. 865), passed in 1918, deals with the same subject matter. Since their is no express repealer of Section 34 of the Execution Act, the old statute is repealed by implication only to the extent that it is inconsistent and the two acts must be read together. This was so held in the recent three-judge court case of *Sovereign Camp, W. O. W.* v. *Wilentz*, 23 F. Supp. 23, 29 (U. S. D. C., N. J., 1938). * * * The Execution Act provides the mechanics; the 1918 statute makes definite the date of payment over by the Collector."

Section 34 of the Execution Act referred to by counsel in the above quotation is substantially similar to Section 35 here involved, except that it applies to municipalities in general instead of to school districts.

Since the court's decree is not capable of the construction placed upon it by counsel in the quotation, the decree should certainly be modified to accord with the concession.

Such a modification will not go quite far enough, however. The Tax Act of 1918 repealed the Execution Act (as we shall hereinafter call Sections 34 and 35 of the Execution Act and Section 237 of the School Law collectively).

All four of these sections are contained on pages 85-88 of the Appendix, *infra*, the provision of the Tax Law being Section 505 of Chapter 236 of the Laws of 1918.

As an example of the inconsistency between the Execution Act and the Tax Law, the Execution Act requires that upon failure to find property subject to an execution against the municipality or school district, the execution shall be lodged with the *assessors* of the taxing district who shall assess as a tax the amount due upon the execution. The Tax Law provides that when no property can be found to satisfy

the execution issued against a taxing district, the execution shall be lodged with the *County Board of Taxation,* which shall add the amount due upon the execution to the amount certified to it to be raised by taxation. The two provisions simply cannot exist side by side. If both were in force, the effect would be that every judgment would result in two taxes, each for the full amount of the judgment, one assessed by the assessors of the taxing district, and the other by the County Board of Taxation. Yet the court below said in its opinion (R. 88, italics ours):

> "The provisions of the Tax Act of 1918 did not, by implication, repeal the above mentioned laws, upon which the complainant relies. Such repeals are not favored, and the provisions of the various statutes *are not materially inconsistent.*"

This seems to have been a palpable inadvertence.

POINT II.

The court erred in rendering the declaratory judgment that the acceptance of bonds in settlement of taxes may interfere with the enforcement of the plaintiff's judgment and in issuing the injunction based upon it.

The decree below contains the following provision (R. 98):

> "It is Ordered, Adjudged and Decreed that acceptance of bonds in settlement of taxes may materially interfere with the complainant in the enforcement of its judgment, and that defendants be and they hereby are enjoined from making settlement for taxes due and owing to the Borough of Runnemede, New Jersey, by any medium except in accordance with the laws of the State of New Jersey."

While the injunction against making settlement for taxes by any medium "except in accordance with the laws of the State of New Jersey" seems to be no more than a way of

raising the question as to what the laws of the State of New Jersey prescribe, a liberal construction of the whole paragraph indicates that all defendants are enjoined from accepting bonds in settlement of taxes.

The Borough Council of the Borough of Runnemede accepted bonds of the municipality in compromise of taxes and the Municipal Finance Commission gave its consent which was required by the terms of the statute because some of the taxes compromised exceeded $500. (See, for example, R. 226-231.)

The plaintiff's bonds were issued June 1, 1930 (R. 113). At that time the matter was governed by New Jersey Laws of 1928, Ch. 123, which provided as follows:

> "1. Whenever taxes or assessments, or both, levied and assessed against real property in this State are in arrears and unpaid and the owner of said real property or other person having an interest therein shall make application, in writing, to the governing body of the municipality in which said real property is situate for a revision, adjustment and reduction of said taxes or assessments, or both, and the said governing body shall determine that the sum of said taxes or assessments, or both, and the interest due thereon is greater in amount than the value of the real property upon which said taxes or assessments were levied, assessed and fixed, said governing body may fix and determine an amount to be accepted by such municipality in full satisfaction of the said taxes or assessments, or both, and the interest accrued thereon. If, within thirty days from the date of said determination, the petitioner shall pay to the collector of taxes or other proper officer of the municipality the amount fixed and determined as aforesaid, the said sum shall be accepted in full satisfaction of all said taxes, * * * ."

Section 212 of the Act Concerning Municipal Finances now provides as follows:

> "The governing body of any municipality in which the Commission is functioning shall have power to

compromise and adjust the whole or any part of any special assessments or taxes delinquent to the municipality; * * *. No claims of the municipality for taxes or assessments, and interest thereon, in excess of five hundred dollars, shall be compromised without the assent in writing of the Municipal Finance Commission."

Neither of these statutes expressly refers to bond compromises. Yet there is nothing in either which necessarily limits its scope to cash compromises. Surely, if taxes of $1,000. can be satisfied by the transfer of property worth $50. (and that is the import of both statutes) the same taxes can be satisfied under the same statute by the surrender of a bond selling in the market at $500.

The question is one of statutory construction quite as much as one of constitutionality.

The only extension of the right to compromise made by the statute complained of (Section 212 of the Act Concerning Municipal Finances) is that the power to compromise was limited by the old 1928 Act to cases where the taxes and interest exceeded the value of the real property on which they were levied. It was, therefore, incumbent upon the plaintiff when it asked an injunction against bond compromises which were not permitted by the law at the time the plaintiff bought its bonds to show that the transactions which had actually taken place under the new Act were of a character unauthorized by the old.

So far as there are indications in the evidence as to the relative value of the property and the taxes thereon which had been settled by the surrender of bonds, they tend toward the conclusion that the expedient was adopted only when it would result in bringing in taxes which the municipality would otherwise never have received, i. e., where the taxes exceeded the value of the property.

The uncontradicted testimony in the mandamus case of *U. S. ex rel. Woodmen of the World* v. *Board of Education of Runnemede* is that to collect money upon certain of the

properties it was necessary to compromise with the taxpayers (R. 172). In explaining the reserves against taxes it was stated that they would provide the slack which would permit cash compromises of taxes which would be necessary since bond compromises had been stopped, and that it was obvious that the municipality would eventually have to take a loss since in many cases the property was not of sufficient value to permit the municipality to collect its taxes thereon (R. 172, 175).

Even if the statutes in existence at the time of the issuance of the bonds did not permit bond compromises, a subsequent statute permitting bond compromises would not necessarily be unconstitutional. It perhaps might be so administered that an unconstitutional invasion of bondholders' rights might result. Certain bondholders might be so preferred over their fellows as to justify a complaint. There would be no basis for any injunction against all bond compromises, however, without proof that the statute had been used as an instrument of unfairness, preference or oppression. The only way in which the plaintiff could have justified the decree below would have been by convincing the court that the practice of acceptance of bonds for taxes cannot be so wisely exercised as to avoid creating an unconstitutional impairment of the contract of bondholders.

Just the contrary is the case. The device has been found to be of great value where the accumulation of arrears of taxes is greater than the property can meet without a reduction. The taxpayer is enabled to save his property and the municipality and the remaining bondholders are thus benefited by having the property kept upon the tax roll. The municipality is also benefited by the reduction of its interest burden and the remaining bondholders are benefited by the improvement of the ratio of the security to the debt. Such an operation does not extinguish any tax lien which would be available to produce cash for the remaining bondholders (R. 175), and under the imposition of the rule here imposed that the taxpayer must pay the current year's

taxes in cash and may use bonds only for preceding years (R. 171), it actually produces cash which would never otherwise be obtained.

In many cases the practice is being continued with the consent of all bondholders but the Commission does not desire to force upon the bondholders its ideas of what they want and had announced prior to the hearing below that it would not approve bond compromises except with the consent of all creditors (R. 60). All compromises theretofore approved have since been completed (R. 117).

POINT III.

Even if the stay provisions and the provisions for acceptance of bonds in payment of taxes were unconstitutional, the three-judge court was without jurisdiction because no substantial case was made out for an injunction against state officers in the enforcement of such provisions:

A. As to the jurisdiction of the three-judge court with respect to the stay provisions of the statute.

On motion of the plaintiff, a court consisting of a circuit judge and two district judges was convened below and heard and determined this suit on the theory that it was of a character which, pursuant to the provisions of Section 266 of the Judicial Code, ousted the one-judge district court of jurisdiction.

Section 266 of the Judicial Code (U. S. C. 380; 36 Stat. 557, 36 Stat. 1162, 37 Stat. 1013, 43 Stat. 938) provides as follows:

> "No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, * * * shall be issued or granted * * * upon the ground of the unconstitutionality of such statute, unless the application for the same shall be

> presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. * * * The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; * * *."

It is not enough to give the three-judge court jurisdiction that the plaintiff make an empty prayer for an injunction against state officers in the enforcement or execution of a state statute upon the ground of the unconstitutionality of the statute. Unless a substantial question is presented the three-judge court is without jurisdiction. Where a three-judge court has improperly assumed jurisdiction it is the practice of this Court upon appeal, even though such an appeal does not bring up the merits, to exercise its appellate jurisdiction to correct the improper action. In *Gully v. Interstate Natural Gas Co.*, 292 U. S. 16 (1934), the three-judge court had granted an injunction against state officers. This Court held, on a direct appeal thereto, that no substantial question was presented as to the validity of the statute. It therefore reversed the decree below and remanded the cause to the district court for further proceedings to be taken independently of Section 266 of the Judicial Code.

In the case at bar, at the hearing upon the application for the interlocutory injunction and final injunction on October 29, 1936, a motion was made to remit the case to the district judge and decision thereon was reserved. (Order of Continuance, R. pp. 63, 64, Docket Entries, R. 1.)

The answer of the Municipal Finance Commission contained as a sixth separate defense (R. 79) a statement that no injunction in accordance with the prayers of the bill of complaint was authorized by Section 266 of the Federal Judicial Code under which the court of three judges was

ssembled because the suit was not one of those described
n that Section.

The answer of the local officials raised the same point
R. 69, 71).

On the taking of evidence in support of the application
or the interlocutory injunction and final relief, objection to
he testimony was made on the ground that no cause of action
or an injunction was stated against the Municipal Finance
ommission (R. 129).

The three-judge court, nevertheless, held as part of its
rst conclusion of law (R. 92):

> "We are satisfied that, under the provisions of Section 266 of the Judicial Code (28 U. S. C. A. sec. 380), the issues raised in the pleadings in this cause have been legally presented to a Three-Judge Court, and that this Court, as constituted, has jurisdiction to dispose of the question of preliminary injunction, as well as the determination of the issues presented by the pleadings. * * *"

All appellants assigned as error the assumption of juris-
iction by the three-judge court and the denial of the motion
o remit the suit to a single judge. (Assignments of Error,
os. 1-5, inc., 9; R. 101-102).

In spite of the conclusion of the court below, it is sub-
nitted that there never was any substantial basis for a con-
ention that the members of the Municipal Finance Com-
ission were subject to an injunction against enforcement
r execution by them of the stay provisions of the Act
oncerning Municipal Finances.

The position of the plaintiff must be that it was deprived
access to the usual forum because it sought an "injunc-
on suspending or restraining the enforcement, operation,
execution" of a statute of the state by restraining the
tion of an officer of such state "in the enforcement or
ecution of such statute * * * upon the ground of the un-
nstitutionality of such statute."

To reach this conclusion the plaintiff would have to present a cause of action entitling it to an injunction against the enforcement or execution of the stay by defendants who are state officers. This it did not do in its complaint; this it did not do in its testimony, and this it cannot do. The only state officers who are defendants are members of the Municipal Finance Commission. The members of the Municipal Finance Commission have no power under the statute to execute or enforce the stays complained of. An injunction against execution or enforcement of the stays directed against the Municipal Finance Commission would be completely ineffective. The stays would still stand in full force and effect because the party enjoined would be powerless to relax them.

The complaint does contain the empty prayer that the Municipal Finance Commission be enjoined "in the enforcement and execution" of the stay provisions and "from functioning" in the municipality (Complaint, Count Four, subdivisions C and D, R. 21).

In the face of this explicit prayer for an injunction against the enforcement and execution of the stay provisions, the court below limited its injunction (R. 99) to one restraining the Commission "from functioning in the Borough of Runnemede, New Jersey, to the extent that such functioning may be inconsistent with the right of the complainant to enforce in the manner herein stated executions to be issued in this Court * * *."

It was obviously impossible for the court below to enjoin the Municipal Finance Commission "in the enforcement and execution" of the stay provisions because there was not, and could not have been, any threat that the Commission would do anything of the kind. We do not think that the court bettered matters by restraining the Commission "from functioning in the Borough of Runnemede, New Jersey, to the extent that such functioning may be inconsistent with the right of the complainant to enforce in the manner herein stated executions to be issued in this Court * * *." The fact

that the court was forced to resort to this circumlocution to use language appropriate to an injunction is evidence that there never was any substance to the claim that a cause of action existed against the Municipal Finance Commission to restrain it "in the enforcement and execution" of the stay provisions of the statute.

Instead of being equivalent to an injunction against the enforcement or execution of the statute, the injunction awarded is completely ineffective, just as any injunction involving the stay provisions was bound to be if directed against the Municipal Finance Commission. The Municipal Finance Commission has no statutory power to "function" in the Borough of Runnemede to any extent that "may be inconsistent with the right of the complainant to enforce in the manner herein stated executions to be issued in this Court."

The stay provisions which the court below held were unconstitutional are Sections 351-355, inclusive, constituting Article III-A of the Act Concerning Municipal Finances, printed in Appendix C, pp. 107-110, *infra*. They are made applicable to school districts, both by reference and by repetition, in Chapters 195 and 258 of the Laws of 1935 (pp. 119, 132, *infra*).

The net effect of these stay provisions is: (Section 351) whenever and so long as the Commission functions in the municipality execution is stayed unless otherwise specifically ordered by the Supreme Court after notice to the Commission; (Section 352) mandamus to compel the levy of taxes is stayed except that the Supreme Court after notice to the Commission may authorize creditors to bring a proceeding for the benefit of all, and except that the Municipal Finance Commission may bring such a proceeding; and (Section 354) a proceeding may be maintained for the application and distribution of the funds of the municipality in which the Supreme Court has authority to make an order forbidding disbursement of the municipality's funds pending determination. It is provided in Section 355 that upon the applica-

tion of any creditor the Supreme Court may vacate any statutory stay contained in the article.

The members of the Municipal Finance Commission have no power under the statute to execute or enforce the stays held unconstitutional. The declaratory judgment given below that the stays are unconstitutional, although difficult to interpret, seriously interferes with the administration of the Act, and it is because of that declaratory judgment that we are appealing, but the injunction against the Commission's functioning in the borough to the extent that such functioning may be inconsistent with the right of the complainant to enforce executions to be issued in the federal court accomplishes nothing.

A verbal argument might be made in support of the effectiveness of the injunction below if it had enjoined all "functioning" of the Commission in the borough because, as a matter of phraseology, the stays are in effect in those municipalities where the Commission "functions." But the court below properly gave express permission to the Commission to continue its ordinary activities in the borough by adding this qualification to the injunction against "functioning" (R. 99):

> "* * * but without prejudice to any of the powers and duties of the Municipal Finance Commission under the Municipal Finance Commission Act except as the stays therein contained affect the right of the complainant to enforce such a judgment."

This qualification was not the result of mere abundance of caution. An injunction against *all* functioning would have forbidden activities which even the plaintiff would admit were beneficial.

For instance, the Commission is empowered (Section 306, *infra*, p. 106) to cause reassessments of the taxable property; (Section 209, *infra*, p. 96) to see that payments are within valid budget appropriations; (Section 209-a, *infra*, p. 97) to fix limits upon non-debt-service items of expenditures; (Ch. 292, L. 1935, Section 1, *infra*, p. 121)

to make recommendations with respect to the budget; (Section 3, *infra*, p. 122) to certify an officer or employee for failure to perform his duty and upon his further failure to appoint a substitute; (Section 5, *infra*, p. 123) to provide that tax collections shall be applied equally and ratably for the various purposes for which levied.

There never was the slightest chance of success in plaintiff's verbal argument that the Commission ought to be prevented from functioning *at all*. As above indicated, these stays exist "whenever the Municipal Finance Commission shall function in any municipality and so long as it shall continue so to do." The line of this verbal argument is evidently something like this: "The stay in the statute is unconstitutional and should be eliminated. The stay lasts under the literal wording of the statute only so long as the Commission functions in the municipality. We therefore ask that the unconstitutional stay be eliminated by enjoining the Commission from functioning in the municipality even though the activities which make up its functioning are beneficial to all."

This argument is as though a remainderman should argue that he was entitled to have the court put the life-tenant to death because of the unconstitutionality of a statute which made a remainder interest inalienable so long as the life-tenant lived.

The Municipal Finance Commission has no more power to enforce or relax the stays than the supposed life-tenant would have to make the remainder interest alienable. The court below has accomplished nothing in forbidding the Municipal Finance Commission to function in any way inconsistent with the right of the plaintiff to enforce its execution. The court's position is much as though it had held the Gold Clause Abrogation Act unconstitutional and had therefore enjoined the director of the W. P. A. Federal Theatre Project from functioning in any way which might be inconsistent with the right of a plaintiff to enforce the gold clause in bonds held by him.

In all seriousness and with all respect, we do not know what the injunction means. Its words seem to be divorced from reality. We are not helped by the court's conclusion of law (R. 93) which reads as follows:

> "2. We hold that the members of the Municipal Finance Commission are proper, necessary and indispensable parties to the action because of the supervisory control which the act of the Legislature of the State of New Jersey gives them over the municipality in question; that as such members they are given authority to enforce the provisions of the act, and that such authority invests them with powers making it necessary that they should be party defendants for the enforcement of any decree that may be made in this action. This conclusion applies to all of the counts in the bill of complaint."

It is to be noted that the court refers to no specific provision of the statute where the members of the Municipal Finance Commission are given with respect to the stays "supervisory control" or "authority to enforce them" or "powers making it necessary that they should be party defendants for the enforcement of any decree that may be made in this action."

On the contrary, the court below, after reciting a specific prayer for an injunction against the enforcement and execution of the stays, granted it only to the extent of enjoining functioning in a manner inconsistent with the right of the plaintiff to enforce its execution. (Decree, Par. X, R. 99.)

Thus, the plaintiff failed to assert a substantial claim to a cause of action for an injunction against the Municipal Finance Commission based upon the unconstitutionality of the stay provisions, because it failed to assert a substantial claim that the members of the Municipal Finance Commission were the parties against whom the injunction should run.

The declaratory judgment as to the stays falls with the injunction as to the stays, since the injunction was the court's sole basis for existence. The application for

ratory judgment was at best incidental to the applica-
or an injunction and if the three-judge court was with-
risdiction to entertain the application for the injunc-
it had even less jurisdiction to entertain the applica-
or the declaratory judgment. (*Oklahoma Gas & Elec-
o. v. Oklahoma Packing Co.*, 292 U. S. 386, 390 (1934)).

**As to the jurisdiction of the three-judge court with respect
provisions for acceptance of bonds in payment of taxes.**

will doubtless be urged that the injunction against the
tance of bonds in payment of taxes was one object of
it, at least, which raised a substantial question as to
bility of the Municipal Finance Commission to an in-
on against the enforcement and execution of a state
e on the ground of its unconstitutionality. The claim
e that in so far as relief is sought against the accept-
f bonds in payment of taxes, the case is brought under
n 266 of the Judicial Code and that the one-judge
t court is ousted of jurisdiction.

is clear, however, that the joinder of the members of
unicipal Finance Commission as defendants in the
which seeks that relief was merely colorable for the
se of ousting the district court of jurisdiction, and
herefore the application for an injunction against the
ance of bonds in payment of taxes raised no substan-
estion requiring the assembly of the three-judge court.
is point was raised below by the same steps as are
d in the preceding subdivision A of this point.

vertheless, the court's final decree contained (R.
eclaration that the acceptance of bonds in settlement
s may materially interfere with the complainant in
orcement of its judgment and embodied an injunc-
ainst all defendants from making settlement for taxes
owing to the borough by any medium except in ac-
e with the laws of the State of New Jersey.

our position that the prayer for such an injunction
the Municipal Finance Commission and the case

made out in support thereof was so palpably a colorable device to bring the case before a three-judge court, that such a court ought not even to have been assembled.

The sole connection of the Municipal Finance Commission with the acceptance of bonds in payment of taxes is to be found in Section 212 of the Act Concerning Municipal Finances, which provides as follows:

> "212. The governing body of any municipality in which the Commission is functioning shall have power to compromise and adjust the whole or any part of any special assessments or taxes delinquent to the municipality * * *. No claims of the municipality for taxes or assessments, and interest thereon, in excess of $500, shall be compromised without the assent in writing of the Municipal Finance Commission."

It is true that a plaintiff is entitled to keep its case out of the one-judge district court and submit it to a three-judge court under the language of Section 266 if it makes out a case for an "injunction suspending or restraining the enforcement, operation or execution of any statute of a state by restraining the action of any officer of such state in the enforcement or execution of such statute * * * upon the ground of unconstitutionality of such statute".

The plaintiff alleged that it was being injured by the action of the defendant Tax Collector of the Borough of Runnemede in accepting bonds in payment of taxes pursuant to resolutions of the Council in the Borough to which the consent of the Municipal Finance Commission (necessary because the compromises involved more than $500) was accorded. An injunction was sought against the Tax Collector *and against the Municipal Finance Commission.*

If the injunction were sought against the tax collector alone, no case would be stated for a three-judge court because the tax collector is not a state officer. On the other hand, a substantial claim for an injunction against the

unicipal Finance Commission which would require the ssembly of a three-judge court would probably carry with incidental jurisdiction to include the local officers in the junction unless the question involving the state officers as colorable or fraudulent. (*Firemen's Insurance Co.* v. *ha*, 30 F. 2d 539 (D. C. S. D. N. Y. 1928), aff'd. 278 U. S. 0 (1929—mem.)). The joinder of the Municipal Finance mmission here was clearly colorable.

No state of facts can be supposed under which the plain- f would be entitled to an injunction against the Municipal nance Commission's consenting to the compromise where would not also be entitled to an injunction against the collector's consummating the compromise. We can- conceive of any reason for joining the Municipal nance Commission in the prayer for the injunction ex- t for the purpose of taking this case out of the jurisdic- n of the one-judge district court. That such was the rpose of the plaintiff becomes perfectly clear when we e the plaintiff's failure to seek an injunction against the rough Council, which is the body empowered by Section of the Act Concerning Municipal Finances to authorize compromises. Surely if there was any reason for ask- an injunction against the Municipal Finance Commis- , which can merely consent to compromises, there would nuch greater reason for seeking an injunction against body which arranges the compromises.

t is settled that a mere nominal joinder of state officials efendants in a case where the substantial relief sought injunction against local officials does not require the ening of a three-judge court (*Pleasant* v. *Missouri- sas-Texas Ry.*, 66 F. 2d 842 (C. C. A. 10, 1933) *cert.* ed 291 U. S. 659 (1934)).

matters involving diversity of citizenship, the joinder necessary parties is disregarded (*Rogers* v. *Penobscot g Company*, 154 Fed. 606 (C. C. A. 8, 1907); *Salem t Company* v. *Manufacturers' Finance Co.*, 264 U. S.

182, 190 (1924)). We submit that the same rule should apply here.

The plaintiff, in Count Three, which we are now considering, sought an injunction against local officers (the assessors and collector) and invoked a three-judge court in the face of the many decisions that the ordinary one-judge district court is the only court with jurisdiction where the party sought to be enjoined is a local officer. The plaintiff's theory probably was that since it sought an injunction against state officers (the members of the commission) it was entitled to be heard by the three-judge court and, once in a three-judge court, it was entitled to have that court hear an incidental application for an injunction against a local officer. In other words, the theory is that the state officers are indispensable parties and the local officers are merely proper parties.

But here it is the application for the injunction against the local officer which is the main controversy and the application for the injunction against the state officers would, except for its obvious sinister purpose, be a mere useless flourish.

If the plaintiff was right in believing bond compromises unconstitutional the natural way and the only way in which the plaintiff could protect itself against the receipt of bonds for the payment of taxes was to have the court prohibit such action by the local tax collector, who is the only one authorized to accept the payment of taxes, or perhaps prohibit action by the local governing body, which is the only body authorized, under Section 212 of the Act Concerning Municipal Finances, to make compromises. Such a prohibition against either one of these local agencies would effectually prevent bond compromises. Nevertheless, the plaintiff added a prayer for an injunction against the Municipal Finance Commission's exercising its authority to consent to compromises arranged by the Borough Council where the amount involved is over $500. That injunction the court granted.

The cases cited above illustrate the principle that where the jurisdiction of the federal court depends upon the status of the parties to the proceeding, the courts will consider in the determination of the question only the necessary parties. No better example of an unnecessary party could be found than the Municipal Finance Commission in this case. The cases cited above held that certain parties were so unnecessary that they need not be considered in determining whether there was diversity of citizenship. In those cases the unnecessary parties were joined in order that equity might give complete relief. Even in such a case the presence of the unnecessary party in the suit is of no account in determining whether there is diversity or identity of citizenship between the parties. (*Salem Trust Co.* v. *Manufacturers' Finance Co.*, 264 U. S. 182, *supra*).

In the case at bar, if relief can be obtained at all, complete relief can be obtained without the presence of the Municipal Finance Commission, by a mere prohibition of the receipt of bonds in payment of taxes by the tax collector. An injunction against the Commission's consenting to that practice would add nothing. The Commission is, therefore, a completely unnecessary party in this proceeding and its presence in the case as the object of a prayer for an injunction against its consenting to bond settlements should not have availed to oust the one-judge district court of jurisdiction.

As in the case of the injunction with respect to the stays, the three-judge court, being without jurisdiction, to entertain the only controversy which might serve as a basis for its existence, i. e., the prayer for an injunction against the acceptance by the Municipal Finance Commission of bonds in payment of taxes, was *a fortiori* without jurisdiction to entertain the prayer for an injunction against the local officers or the application for a declaratory judgment that the statute permitting such compromise is unconstitutional.

CONCLUSION

The decree below should be reversed and the cause remanded to the United States District Court for the District of New Jersey with instructions to proceed independently of Section 266 of the Judicial Code and to dismiss the complaint upon the merits.

Respectfully submitted,

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APPENDIX A.

STATEMENT OF TH ACTIVITIES OF THE MUNICIPAL FINANCE COMMISSION WITH RESPECT TO THE BOROUGH AND SCHOOL DISTRICT OF RUNNEMEDE, NEW JERSEY.

Some notation has already been made of the causes and conditions which led to default in Runnemede. Several of them, such as the fact that real estate expansion had run away with sound financial planning (R. 167), that the borough had been improvidently formed to begin with, and that no local industries existed to provide jobs and salaries (R. 177), obviously were uncorrectible. Others, such as the failure to hold tax sales or foreclose on liens (R. 164, 173), inexperienced local fiscal management, interfund borrowings (R. 168-69), and the like, were more easily correctible. The essentially political nature of the financial theories of a town are nowhere more adequately demonstrated than in municipalities which have defaulted. Runnemede is no exception to the rule.

The Municipal Finance Commission entered the Borough of Runnemede when conditions were extremely bad. No tax sales had been held (R. 164-65); there was a disastrous amount of tax liens outstanding unforeclosed and unredeemed (R. 175); the local schools were gradually losing funds (R. 169); and the failure of the borough to discharge taxes owed to state and county contributed to the difficulties into which the superior governments were entering. With a cooperative mayor and council, this situation was not hopeless (R. 168, 166),—indeed, the introduction into the borough of the commission's experienced financial management and an auditor had immediate beneficial results (R. 320). Plans were made for a tax sale (see *infra*), and collections improved enormously (R. 320). In the fall of 1934, however, a new administration controlled the Council (R.

166). After that the Commission lacked the former de... of local cooperation and obstacles were placed in its pa... (*Ibid.*, and see *infra*).

The plaintiff's attempt at full discharge of this creditor's bond judgment by a lump sum mandamus would, if successful, have either raised the tax rate to an uncollectible point or ended all borough activities by drying up the source of sums allocated for vital current running expenses. These situations have been met by the Commission.

The first problem with which the Commission had to deal was the necessity of foreclosing on or perfecting tax liens and thus either forcing payments or acquiring sound title. In this the municipality had been extremely lax (R. 175, 323). The Commission took cognizance of that fact from the moment of its entrance (*Ibid.*) and substantial progress was soon reported (R. 320). Blanket foreclosure of course were inadvisable by reason of the expense necessitated when property owners hold the municipality to the letter of the strict New Jersey statute (R. 205, 320, 167). On October 19, 1934, some 24 acres (139 lots) were deeded over for taxes by their owners, without the expense of foreclosure (R. 312). Pressure towards collection of delinquent taxes was constant (R. 256) and the Commission followed and directed the Collector closely. Progress reports were demanded as a part of the weekly check-up (R. 234, 2... 320). Likewise, land receiverships for taxes were made use of under the Stout Act (R. 234). Tax title liens, subject to foreclosure, were regularly, and for the first time, turned over to the Borough Attorney (R. 208). Fortunately, in the matter of expense, 900 properties were deeded over for a price of only $450 (R. 167).

Foreclosure on liens, in time of an acute realty depression, is extremely likely to place in the hands of the municipality large quantities of dead property. While legal fees may be saved by the process of deeding over by the few property owners willing to do so, the question of dis...

posal remains a vexing one. Runnemede, for example, had taken over a theatre in fee simple (R. 173), and there were some 900 lots acquired by deeds (R. 167). The natural tendency was to dispose of such property as soon as possible. By its careful scrutiny of suggested leases and sales (R. 315, 305, 304, 256, 253, 208, 206), the Commission has staved off helter-skelter disposition urged by various would-be purchasers (R. 304). Recent developments indicate that a fairly good sale of the theatre is at hand (R. 203-204). Such conservation of assets is to the benefit of creditors and municipality alike. The whole attitude has been to bring about a valid sale at as high a price as possible considering the gradual improvement in the general financial and realty picture.

Again, the failure of the borough to hold a tax sale since 1930 (R. 164, 166) was not sound financial practice. The recent appearance of the collector before the County Board and the resultant pending sale are the successful culmination of some two years of endeavors on the part of the Commission (R. 204). At its third meeting on Runnemede, it directed that a "complete tax sale" be held after July 1, 1934 (R. 323). This followed an intensive investigation of the causes of the borough's troubles (R. 326-27, 323-24). Taxpayers at once protested strenuously (R. 321), and town officials urged that a sale might well abide the event of stronger efforts towards normal collection (R. 321). As a result, the Commission postponed the sale until September 1, 1934, with the understanding that only concrete proof at that time of substantial progress in clearing up overdue taxes could avert such a step being taken (*Ibid.*) The salability of much of the property was factually doubtful (R. 167). On September 7, 1934, the Commission decided that the collection in the previous two months of $7,905.38 of the $51,703.92 delinquent taxes lent considerable strength to a feeling that extraordinary measures would not be needed (R. 320). On September 20th, the Borough Council by

resolution directed a tax sale (R. 164-165, 315, 166), pro
were struck off of the advertisements (R. 166), collecti
improved at once (*Ibid.*), and when a new Council w
elected the matter never was carried through. The ne
administration even before its entrance hotly resisted
measures (*Ibid.*). Collections fell off again and on Apri
12, 1935, the Commission directed that a sale be held af
July 1st (R. 272-73). This had not been held by Novembe
1 (R. 234), and the Commission was forced to make th
direction again. Since only a taxpayer could mandamu
such a sale (R. 165), the Commission confined itself to pu
ting pressure upon the local officials (R. 214, 211-12). O
September 11, 1936 (R. 206), the Commission cited the Ta
Collector to appear before it. On September 18, 1936, i
took cognizance of the final semi-acquiescence of th
Council (R. 205-6).

The County Tax Board finally directed the Borough
Collector to hold the sale, advertisements appeared and th
sale was to be held *en bloc* on November 10, 1936 (R. 204).

The history of this long conflict is merely one exam
of the necessity of local intervention of the Commissio
for the benefit of bondholders. In other municipalities
save Avalon, where the majority of the property in arrear
is so unsalable as to raise serious doubts of the benefit o
such action, tax sales have either been held voluntarily an
legally or have been directed by the Commission, with th
municipalties acceding (*cp:* R. 166).

The work of clearing up past taxes, however, was no
confined to such major activities as these. There are a hos
of smaller problems, all of which the Commission has be
supervising carefully. They include such widely differen
tiated matters as a continuous check on revision of individu
assessments (R. 206, 207, 213-14); investigation of the ex
penses of town officials (R. 209); allowing and counselling
installment payment of taxes (R. 212, 210); checking th

fides of relief expenditures (R. 210); adjusting insur- costs (*Id.*); establishment of a new current expense (R. 211); obtaining W. P. A. loans (R. 242); bank ac- t adjustments (R. 316-17); the wisdom of issuing tax ıne notes (R. 282, 315); individual tax adjustments 315, 321, 285, 272, 256-57); and refusal of an often- ested blanket cancellation of interest (R. 210, 209, 208). y its acceptance of defaulted bonds for taxes in arrears, orough brought in $19,440.65 in cash, by transactions to or pending at the resolution of October 11, 1935, ı abandoned this practice save as to municipalities e all creditors agreed (Ex. E, R. 60 *et seq.*). No school s were so accepted (R. 171). In the vast number of the bills compromised were those of a taxpayer's e-lot property (119 parties compromised thus). The ırrears so discharged in Runnemede were extremely tful as to collectibility without such aid (R. 171). No t was given for interest coupons unpaid (R. 171). The ayer was forced to turn in cash for all interest and nt taxes (R. 171). Substantial reserves against future llectible taxes were set up for the first time (R. 172-73). ı bond settlements were stopped, collections went down 72). Those taxpayers who were allowed to settle in with bonds have been paying their taxes regularly such action (R. 171).

pincident with such work is the handling of the munici- udget so as to force inclusion of debt service items and down inadvisable expenditures. In this matter the ission has supervised the budget formation in Runne- year by year. The commission first considered Runne- 's budget early in 1935 (R. 298). At that time the ission and the borough officers conferred together a budget proposed by the borough (*Ibid.*). One of ost important corrections made in the budget tenta- put forward was the striking-out from the assets n of an appropriation of surplus revenue, thus avoid-

ing a deficit at the end of the year 1935, and substituting cash resources for a possible book entry (*Ibid.*). When the borough protested, the commission adhered to its view and certified the budget to the state auditor (R. 283), and the county board of taxation (R. 282, 285-86). The official budget for the year, then, was the one carefully worked out by the commission (*Ibid.*). Full debt service, with interest on the defaulted obligations, has been included in each budget (R. 164).

An even hotter fight came the following year. Runnemede failed to file preliminary budget information with the commission; it was finally secured (R. 233). Some difficulty was experienced in getting borough officials to the budget hearing (R. 233, 232-33); but on January 22, 1936, the entire budget was gone over in detail and current expenses pared down (R. 231-32). Further discussion took place (R. 223-24). A sizable item was included for foreclosures, and while deferred charges were reduced (*Ibid.*), the borough was not allowed to cut them any lower than a reasonable figure (R. 215). The appropriation for tax foreclosures being omitted by the borough council, which alone has power to make such appropriations, the commission acceded on that point alone. The borough then adopted a budget which differed; the commission transmitted its figures to the State Auditor for certification to the County Board, and these became official for the year (R. 214, 218). The borough never took steps to adopt this budget, but it stands by force of law as to imposition of debt service items and as to limitations on other appropriations.

The school budget was supervised with much less trouble due to the cooperative efforts of the Board of Education (R. 168). At the same time, the commission has not hesitated to revise it (R. 225-26) for economy and to insert full debt service, after taking jurisdiction in 1935 (R. 254-58). Likewise the audit has been checked (R. 234).

Once a budget has been set out, there remains the task of securing adherence to it. In this, too, the commission

been active, forcing emergency appropriations to be nded in the next budget (R. 207-208).

The work of planning for the future has also included other major activities,—the drafting and study of a unding plan (R. 316, 212) and the compilation and ease of material on the financial status of the borough 209). There is no evidence that the present plain- has advanced such a plan or aided in the one suggested 166).

Finally, the borough services must be kept running. commission has kept current expenses on a level of nomy (R. 213) while seeing to it that public utility vice, health service, and the like were not impaired 212, 211, 316, 320, 321, 322). Repairs on property in s for taxes were urged, to prevent abandonment and from the tax roll (R. 298).

A narration of the Commission's activities in Runne- le is not enough of and by itself. To the implications the complaint defendants answer generally that the stantial results of the functioning of the Municipal ance Commission in the borough and school district Runnemede have been beneficial to creditors, town and e alike. Certain evidence introduced by the stipulation rly demonstrates that fact.

It may be said that there are three cogent problems in management of any defaulting municipality: to keep necessary activities of the borough, such as the pro- ive services and the education system, in adequate king order; to pay creditors, or provide reserve sums ch can be allocated to them by some judicial process; to work out a permanent plan, by which an over- y or ill-organized funded debt can be made more ageable and safeguards can be imposed against fu- possible default. There is nothing savoring of com- sense in the granting of a lump sum mandamus which

can do nothing but force another default in the next fiscal year.

For purposes of comparison, Runnemede's financial situation at present may be placed against that of [illegible]. Likewise, the percentage statistics for Runnemede and the other eleven municipalities where the Commission functions may be placed against those of five other defaulting municipalities, picked somewhat at random, as offering a fair cross-section of the state: Lakewood, Moonachie, Neptune City, West New York and Woodbridge. The statistical materials from which these results are taken will be found at R. 329-346.

First, in the all-important matter of the collection of taxes:

TABLE I.

TAX COLLECTIONS—CURRENT YEAR—%

	1930	1931	1932	1933	1934	1935	1936 (10 mo.)
Asbury Park	55	52	46	45	54	51	20
Avon	47	44	40	35	39	39	15
Bayonne	25	21	15	12	14	15	6
Belmar	40	37	31	28	35	47	25
Bradley Beach	50	42	36	32	37	39	16
Deal	67	63	54	47	53	51	26
Interlaken	59	54	44	40	43	45	17
Manasquan	73	71	62	57	70	72	37
Mt. Ephraim	50	46	38	27	36	39	16
North Bergen	56	52	43	31	45	54	25
Pennsgrove	**46**	**37**	**34**	**32**	**42**	**42**	**21**
South Hackensack	39	39	29	27	34	38	14
Average (12)	**51**	**46**	**39**	**36**	**42**	**43**	**20**
Tinton Falls	50	50	44	34	40	38	26
Wanaque	52	52	40	33	37	36	18
Wenonah	56	48	38	31	43	46	14
West New York	65	64	49	42	48	44	23
Woodbridge	61	55	50	36	51	52	19
Average (8)	**57**	**54**	**45**	**37**	**45**	**43**	**19**

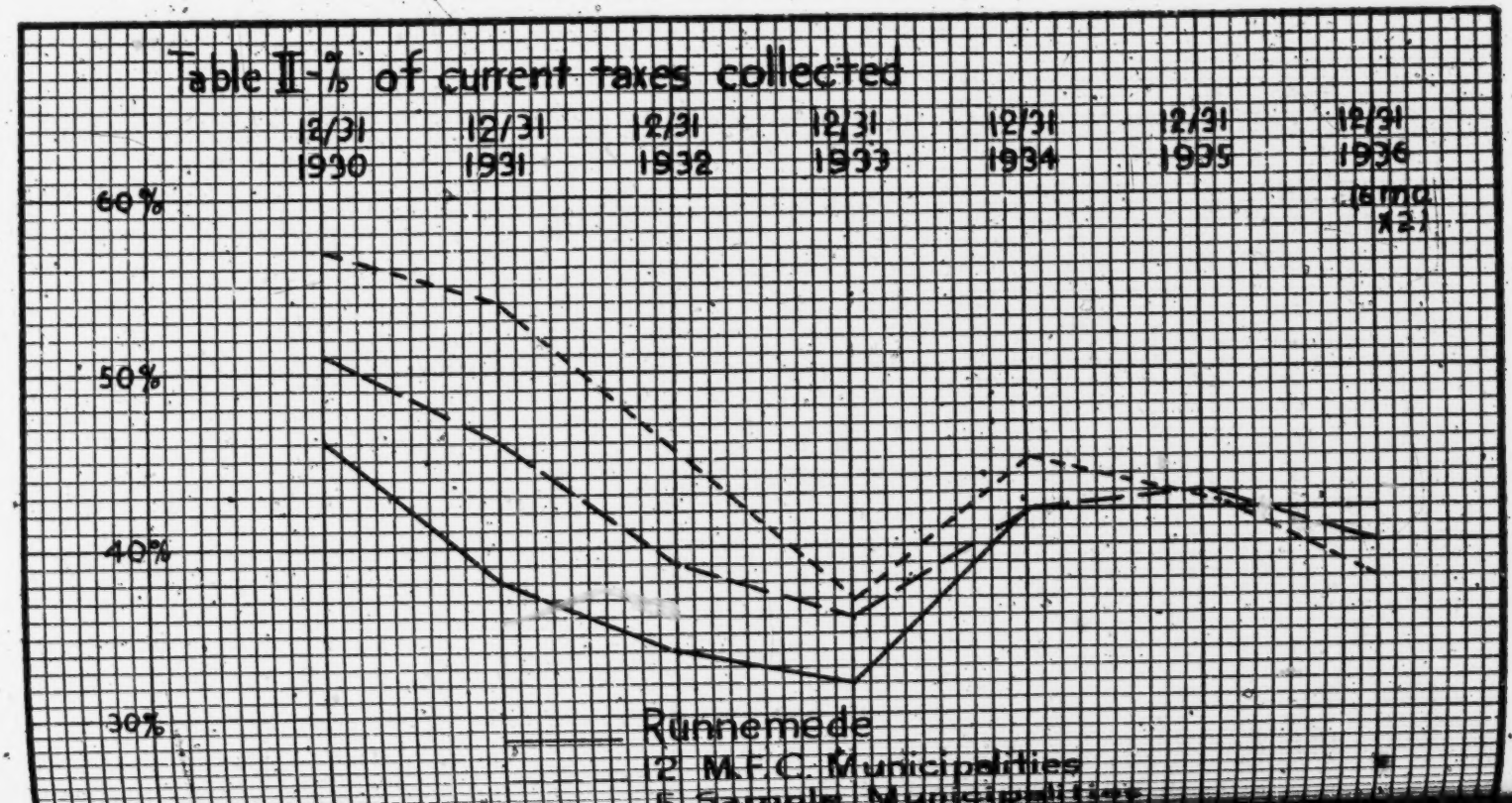
Table II - % of current taxes collected
12/31 1930
12/31 1931
12/31 1932
12/31 1933
12/31 1934
12/31 1935
12/31 1936
60%
50%
40%
30%
Runnemede
12 M.F.C. Municipalities

TABLES I AND II.

These tables show the percentage of current taxes collected each year. It shows that the situation in Runnemede and the other towns where the Commission has entered was worse, up until 1933 and 1934, the years in which the Commission started functioning, than in the five other towns. Since then, Runnemede has improved sharply and held its gain, as have the other eleven Commission municipalities. The five sample towns improved in 1934, but have fallen off since and apparently will be below the Commission municipalities and Runnemede at the end of the current year. The pending tax sale in Runnemede makes this still more likely.

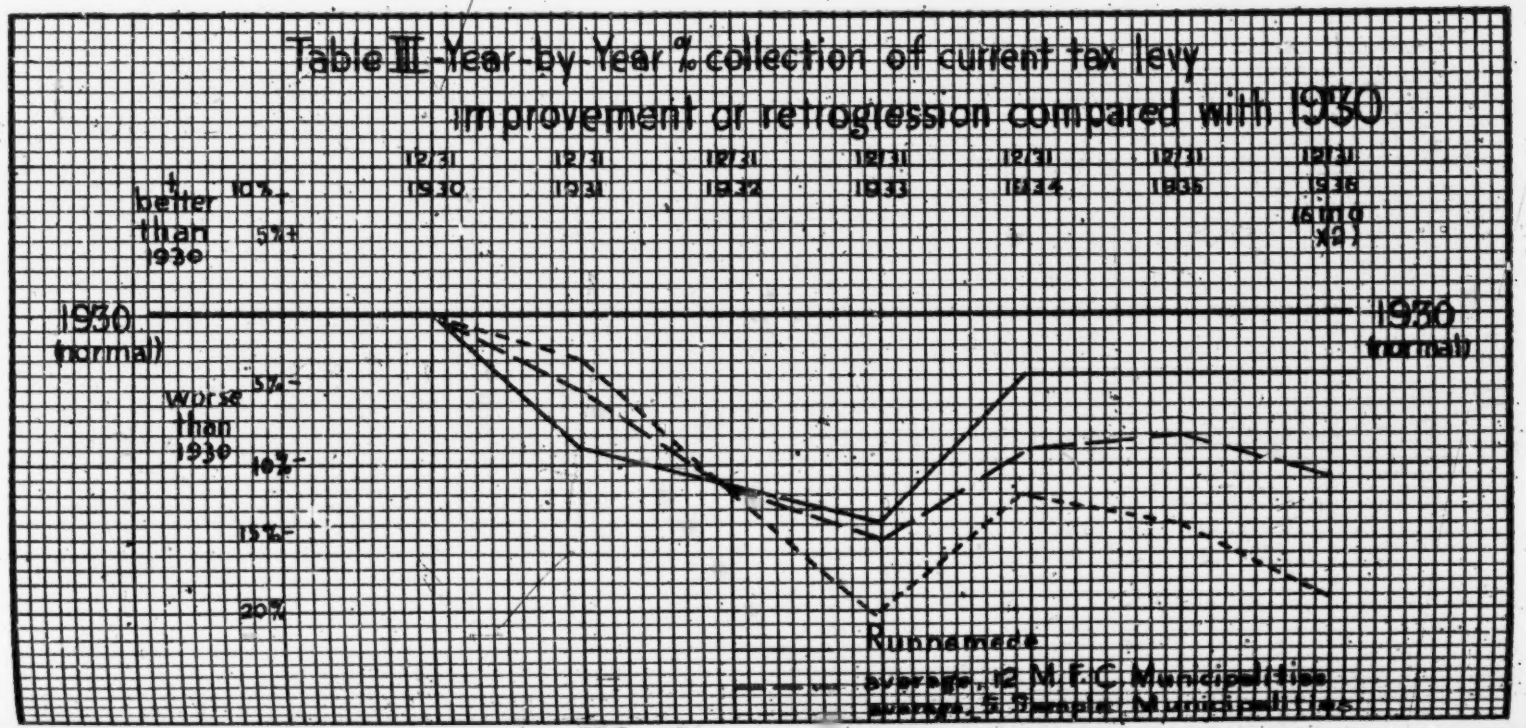
Table III - Year-by-Year % collection of current tax levy
improvement or retrogression compared with 1930
12/31 1930
12/31 1931
12/31 1932
12/31 1933
12/31 1934
12/31 1935
12/31 1936
10% + better than 1930
5% +
1930 (normal)
5% -
worse than 1930
10% -
15% -
20% -
Runnamede
average 12 M.E.C Municipalities
average 5 Bergen Municipalities

TABLE III.

This graph illustrates the meaning of the above figures on percentage collection of the current year's taxes. Runnemede's collections as did those of the other Municipal Finance Commission municipalities and the five samples dropped sharply below the 1930 collections until the year 1934. In that year, the Commission entered Runnemede and collections improved more rapidly than in the five compared municipalities. The twelve towns averaged did only 2% worse than the five towns. Since the end of 1934, Runnemede has held on an even level. The twelve towns held level for one year, and then dropped slightly. The five towns dropped steadily in both 1935 and 1936. Since the towns into which the Commission has entered must have been in extremely bad shape to necessitate such action, progress in tax collections there should certainly be no better than that in other defaulting municipalities in the state. Yet it is.

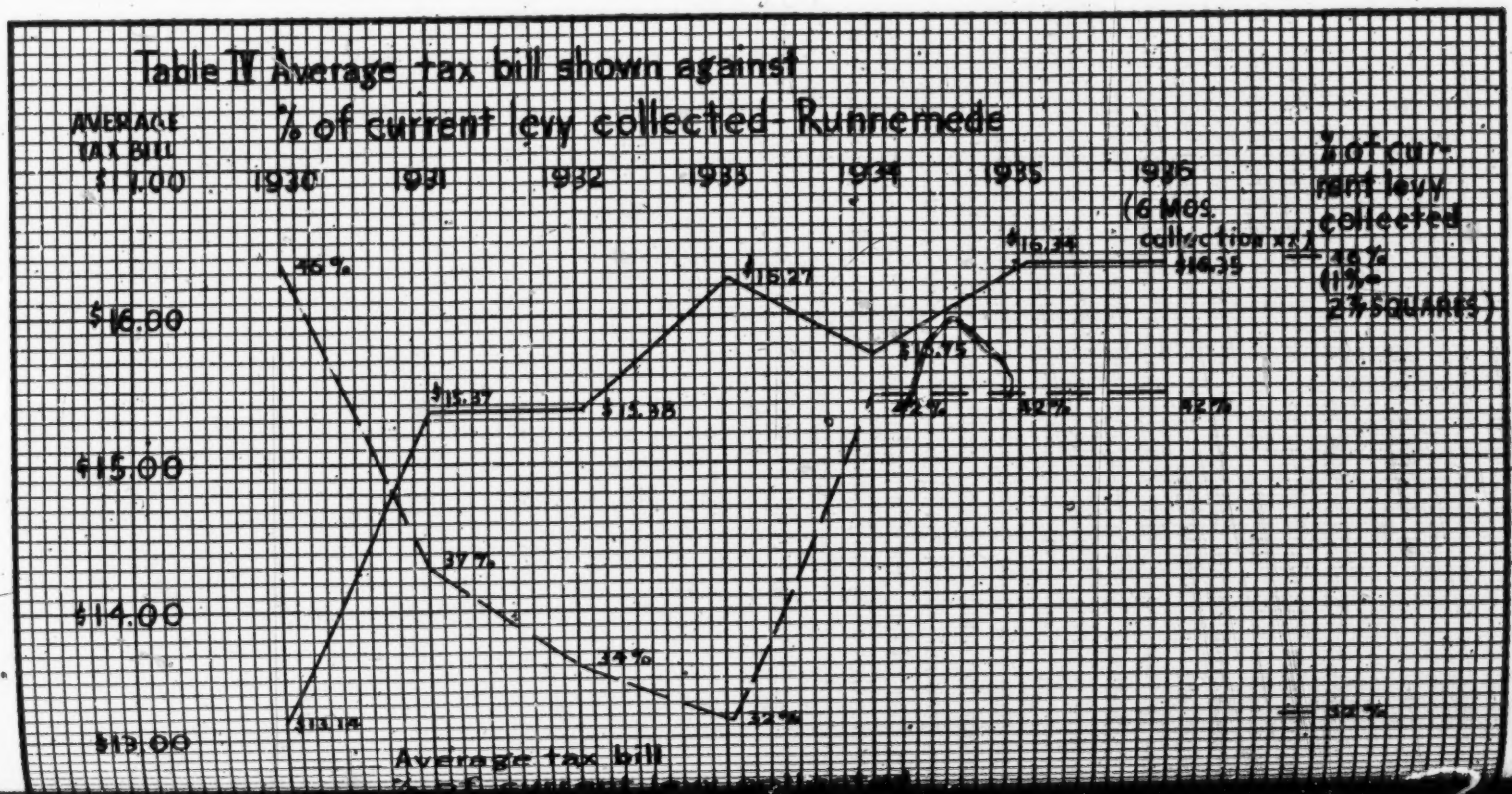
Table IV Average tax bill shown against % of current levy collected Runnemede
AVERAGE TAX BILL
$17.00
$16.00
$15.00
$14.00
$13.00
1930
1931
1932
1933
1934
1935
1936 (6 mos. collection x 2)
% of cur. rent levy collected
36%
37%
33%
$13.18
$15.37
$15.55
$15.27
$16.25
$16.35
$16.13
42%
32%
32%
Average tax bill

TABLE IV.

This table shows that despite alterations in the tax rate nd assessed valuation, the Commission budgets have neces- itated a somewhat higher average tax bill in 1935 and 1936. et this has not checked tax collections, for the total cur- ent collections first improved, when the average tax bill ropped, and since then have held steady as it increased. hile the Commission had nothing to do with the size of he tax bills until 1935, it may claim credit for the improve- ent of 1934 over 1933 in collections. In other words, col- ctions have been kept at a fair level. Since the annual tax ate and the total assessment valuation vary proportion- tely in relation to each other, the average tax bill is the nly true determinant of the real tax load. The Commis- ion's endeavors to adjust it to the point of maximum col- ctibility have been successful.

TABLE V.

Cash in current funds.

Asbury Park	Current 1936	Aug. 31, '36	145,914.69
	Prior years		589,697.02
	Trust		42,867.24
	Capital		10,207.50
	Water		101,756.86
	Beach		216,625.93
	Rent deposit		41,293.73
Avalon	Current	July 26, '36	7,984.75
	Trust		6,376.46
	Capital		1,209.62
	Sinking fund		1,810.98
	Water		1,237.83
Brigantine	Current	Aug. 31, '36	9,814.95
	Trust		2,450.67
	Capital		2,183.11
Chester	Current	Dec. 31, '35	11,863.73
	Trust		22,796.52
	Capital		667.76
	Sewer		28,742.97
	Water		18,043.41
Delaware	Current	Dec. 31, '35	6,530.64
	Trust		60,935.43
	Capital		1,323.60
Fort Lee	Trust	Aug. 31, '36	3,422.22
	Bond impr. service		126,106.04
	Sinking fund		12,217.86
	1936 debt service		52,336.93
	1936 school debt service		12,000.00
Lavallette	Current	Dec. 31, '35	886.37
	Trust		5,696.39
	Capital		162.66
Manville	Current	Dec. 31, '35	17,850.00
	Trust		1,268.45
	Capital		1,012.12
	Water op.		2,713.24
	Water cap.		524.97
Mt. Ephraim	Current	Dec. 31, '35	5,063.79
	Trust		17,391.22
	Capital		1,989.69
	Water op.		1,352.90
N. Bergen	Current	July 31, '36	419,475.51
	Trust		191,184.85
	Capital		28,221.01
	Sinking fund: reserve.		1,366,322.77
Runnemede	Current	Dec. 31, '35	5,661.24
	Capital		10,545.88
S. Hackensack	Current	Dec. 31, '35	752.02
	Trust		4,758.16
	Water assess.		8,577.77

The final important query from the creditor's viewpoint is—"What has been done towards payment?" In some municipalities a refunding will be necessary. Such refundings have been had in Manville and in Lavallette, where creditors were cooperative. (*United States ex rel. Norfolk & Western Ry. Co.* v. *Township of Chester*, U. S. D. C. D. N. J., March 12, 1936; (R. 188-89)). The Commission has long recognized that such measures may be necessary in Runnemede (R. 316). But in all of the municipalities where the Commission operates substantial cash balances have been built up. In the absence of creditors being willing to consider refunding, it is not for the Commission itself to distribute such moneys. Table V demonstrates their extent.

The Municipal Finance Commission Act provides for application by creditors, to the courts of New Jersey, seeking distribution of such funds. (§ 354; P. L. N. J. 1935, Ch. 191, as amended by Ch. 314, P. L. N. J. 1935, Ch. 258, § 17 (c), as amended by P. L. N. J. 1936, Ch. 251.) The Municipal Finance Commission has never resisted such a petition. The funds are there,—a proceeding is provided for their distribution. If in any municipality the creditors feel that the funds should be distributed now instead of as part of a general refinancing they are at liberty to urge that position in the way the law provides.

Study of the statistics submitted also demonstrates that in the twelve Commission municipalities, amounts due the local schools, which in Runnemede had been in severe financial straits (R. 169), have been largely cleared up. No longer is there any threat of their closing. It is also true that sums due the State and County for taxes have been cut down, thus aiding to ameliorate a generally dismal financial situation in New Jersey. Finally, and most important, in the majority of cases cash tax collection improved.

It is submitted that where, under the guidance of the Municipal Finance Commission, towns in default have succeeded in collecting more of their taxes than they did before its entrance; where the average tax bill has been so ad-

justed as to reach a point of steady collectibility; where large quantities of dead property on the hands of the municipality have been disposed of after deliberate consideration of the advisability of sales; where tax sales, long unheld, have been carried out or are pending; where refunding plans have been drawn up, and, when creditors were willing to help, have actually been carried through; where the local schools have been kept open; where illegal diversion of trust funds has been stopped; where the budget has been supervised and controlled, unauthorized expenditures forbidden, and current expenses ridden of waste; where reserves have been set up against future uncollectible taxes; where an experienced financial management has replaced local officials having only rudimentary knowledge of financial affairs; and where large sums are now available for equitable distribution to creditors, the Municipal Finance Commission of the State of New Jersey has not been "lax and dilatory" in the tasks imposed upon it.

APPENDIX B:

PROVISIONS OF THE NEW JERSEY EXECUTION ACT WITH RESPECT TO ENFORCEMENT OF EXECUTIONS AGAINST THE TAXING POWER.

Section 34 of the Execution Act (2 Comp. Stats. p. 2255).

"34. Execution against municipal corporation; service on collector; levy of tax.—Sec. 1. That when any execution shall be issued against any town, township, borough or other municipal corporation of this state, by any court authorized to issue the same, upon any judgment against such town, township, borough or municipal corporation, whether upon a judgment recovered before the passage of this act or subsequent thereto, and there shall be no property belonging to such town, township, borough or other municipal corporation sufficient to satisfy the same whereon to levy, then the officer authorized to execute such process shall serve a copy of the same, not only on the collector of such town, township, borough or other municipal corporation, as is now required by law, but also upon the assessor thereof, who is by law required to assess the taxes in and for such town, township, borough or municipal corporation; and upon receipt of such copy of execution it shall be the duty of such assessor to assess and levy, in addition to the regular taxes, the amount due upon the said execution, with interest to the time when the same shall be paid to the officer serving such process, upon all the property within such town, township, borough, or other municipal corporation; and this tax shall be assessed and collected at the same time and in the same manner and under the same conditions, restrictions and regulations as taxes for other purposes are required to be assessed and collected in such town, township, borough or municipal corporation, and when collected shall be paid over to the officer serving the said process."

Section 35 of the Executions Act (2 Comp. Stats. p. 2256):

"35. Execution against school district; service on township assessors and collectors; levy of tax.—Sec. 1. That when any execution shall be issued

against any school district of this state, or against the trustees of any such school district as a body corporate representing such school district, by any court authorized to issue the same, whether upon a judgment recovered before or subsequent to the passing of this act, and there shall be no property belonging to said school district or body corporate sufficient to satisfy the same liable to be levied on, then the officer authorized to execute such process shall serve a copy of the same upon the assessor or assessors of the township or townships in which said school district is situate, and also upon the collector or collectors of such township or townships; and upon receipt of such copy or copies, it shall be the duty of such assessor or assessors, at the time of the next regular assessment of school taxes in such school district, to assess and levy in addition to said regular school taxes, the amount due upon said execution, with interest to the time when the same shall be paid to the officer serving such process, upon the inhabitants of said school district and their estates and upon the taxable property therein; and this tax shall be assessed and collected at the same time and in the same manner and under the same conditions, restrictions and regulations upon the assessor or assessors, collector or collectors as other taxes for school purposes are required to be assessed and collected in such school district; and the amount of this tax when collected shall be a separate fund, and shall be paid over by the collector of the township in which such school district shall be situate, or if such school district be situate in two or more townships then by the collector of that township in which the fraction of the school district containing the school-house is situate, the officer serving the process."

Section 237 of the School Law (4 Comp. Stats. p. 4804):

"237. Execution against boards of education: service; tax to pay.—Whenever an execution shall be issued against the board of education of a school district or of a union-graded school by any court authorized to issue the same, upon a judgment recovered

either before or subsequent to the passage of this act, and there shall be found no property belonging to said school district or union-graded school sufficient to satisfy the same liable to be levied on, then the officer authorized to execute such process shall serve a certified copy of said execution upon the assessor or assessors of the taxing district or districts in which said school district or union-graded school shall be situate, and also upon the collector or collectors of such taxing district or districts. Upon receipt of such copy or copies such assessor or assessors shall, at the time of the next regular assessment of school taxes, assess upon the inhabitants of said school district and their estates, and upon the taxable property therein, in addition to the regular school taxes, the amount due upon said execution, with interest thereon to the time when the same shall be paid to the officer serving such process and the collector or collectors shall levy and collect the same, and said amount, when collected, shall be a separate fund, and shall be paid over by said collector to the officer who shall have served said process."

Throughout this litigation these two laws are collectively rred to as the Executions Act. It is our contention that June 1, 1930, when the bonds held by the plaintiff were ed, the provisions of the Tax Law of 1918 had been sub- ted for the above quoted provisions of the Executions so far as school districts were concerned. The provision he Tax Law which we contend has been substituted is of Section 505 of P. L. 1918, p. 847 at p. 865, reading ollows:

Tax Act of 1918 (Laws of 1918, Ch. 236, § 505):

"505. • • • When any execution shall be issued upon judgment against any taxing district, and there shall be found no property sufficient to satisfy the same by levy, the officer shall serve a copy of his execution upon the county board of taxation having jurisdiction over said taxing district, and it shall be the duty of the county board of taxation to add the

amount due upon said execution, with interest to the first day of June following, to the amounts certified to it to be raised by taxation in said taxing district, and the amount of said execution and interest shall thereupon also be raised by taxation in said taxing district and paid by the collector thereof on or before the fifth day of June following: *provided*, however, that if the copy of said execution shall not be served upon the county board of taxation before said board shall have determined and fixed the rate for said taxing district for the year, then the amount shall be included by said board in the amount to be raised by taxation in the next following year, and the interest shall be calculated to the first day of June of such year, unless the amount of such execution and interest shall have been included in the taxing ordinance or resolution with the other amounts to be raised by taxation in said taxing district, or unless the execution shall have been satisfied otherwise."

APPENDIX C

CTS RELATING TO THE MUNICIPAL FINANCE COMMISSION

ter 340, Laws of New Jersey of 1931, as amended and emented to June 26, 1936; Chapter 382, Laws of 1933; Chapters 154, 193, and 258, Laws of 1935.

TABLE OF ACTS

PAGE

Laws of 1931, Chapter 340 91
Chapter 384 ..... 107, 111

Laws of 1932, Chapter 236 .....
92, 93, 94, 96, 97, 101, 102, 105, 106, 107, 109, 111, 112

Laws of 1933, Chapter 9 91
Chapter 330 .....
92, 97, 101, 102, 106, 107, 109, 112, 113
Chapter 331 113
Chapter 375 116
Chapter 382 125

Laws of 1935, Chapter 154 126
Chapter 190 117
Chapter 191 110
Chapter 192 93
Chapter 193 127
Chapter 194 118
Chapter 195 119
Chapter 225 ..... 94, 99, 100, 101
Chapter 258 132
Chapter 292 121
Chapter 313 129
Chapter 314 110

Laws of 1936, Chapter 10 122
Chapter 50 ..... 101, 109, 110
Chapter 127 124
Chapter 250 93
Chapter 251 ... 134, 135, 136, 139, 144, 145
Chapter 265 94

An Act Concerning Municipal Finances

Chapter 340, Laws of 1931

Approved April 28, 1931, as amended to June 26, 1936

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

ARTICLE I.

CONSTITUTION OF THE COMMISSION.

101. Whenever it shall be made to appear to a justice of the Supreme Court from any petition filed with him by or on behalf of the holder of any notes or bonds of any municipal corporation of this State, verified by the petitioner, or his or its duly authorized agent, that such municipality has defaulted for over sixty days in the payment of the principal or interest of any of its outstanding notes or bonds held by such petitioner, it shall be lawful for said justice of the Supreme Court to make a summary investigation into the facts disclosed in said petition, and for that purpose he shall have the power to subpoena witnesses and call before him any officers of said municipality. If it shall be established to the satisfaction of said justice that said municipality is so in default, he may make an order to that effect and file the same, together with the said petition, in the office of the clerk of the Supreme Court. (As amended by P. L. 1933, Ch. 9.)

102. Upon the filing of said order, together with said petition, the municipal finance commission, which is hereby created, shall have and exercise with respect to such municipality the powers and duties prescribed by this

act. The Attorney-General, the State Tax Commissioner, and the Commissioner of Municipal Accounts shall constitute such municipal finance commission hereinafter sometimes designated as the "commission." Each member of said commission may designate an assistant in his department to serve in his stead during his absence or inability to act. (As amended by P. L. 1932, Ch. 236, and P. L. 1933, Ch. 330.)

103. Any municipality may file with a justice of the Supreme Court a certified copy of a resolution adopted by the governing body of the municipality, reciting in general terms that due to unusual conditions the municipality is not in a position to meet its obligations when due, in spite of the endeavors of its officers, and petitioning that the municipal finance commission shall function in said municipality. Upon the filing of such petition and upon such notice to the municipal finance commission as said justice may direct, it shall be lawful for said justice of the Supreme Court to make a summary investigation into the facts and for that purpose he shall have the power to subpoena witnesses and call before him any officers of said municipality. If it shall be established to the satisfaction of said justice that said municipality is so unable to meet its obligations, he may make an order to that effect and file the same, together with the said petition, in the office of the clerk of the Supreme Court. Upon the filing of such order, the commission authorized in the preceding section of this act shall function in the said municipality with all the powers and duties conferred by this act. (As amended by P. L. 1933, Ch. 330.)

104. The commission shall have power to make all needful rules for its government and other proceedings not inconsistent with this act, and shall have and adopt a common seal. (Added by P. L. 1932, Ch. 236.)

ARTICLE II.

Powers.

201. The commission shall have power from time to time to prepare and certify to the governing body of such municipality resolutions providing for the funding or refunding of notes or bonds, or other indebtedness of the municipality, and the interest thereon, which the commission shall have found after public hearing to be outstanding and unpaid and to be due or to become due. (As amended by P. L. 1932, Ch. 236, and P. L. 1935, Ch. 192.)

202. Any proposed resolution providing for the issuance of notes or bonds, if such notes or bonds are payable more than one year from the date of issue, shall be certified as aforesaid only after a public hearing by the commission; but no resolution or amendment thereto determining or altering the form of notes or bonds or providing for their sale, execution or delivery shall require any public hearing before such certification.

203. Such resolution shall, on direction of the commission, be adopted by the proper officials of such municipality in the form certified by the commission.

204. Such resolutions and any notes or bonds issued thereunder shall not be subject to the limitations or other provisions of any other act.

205. Excepting resolutions determining or altering the form of notes or bonds or providing for their sale, execution or delivery, and resolutions amendatory thereof or supplemental thereto, such resolutions shall be published in a newspaper circulating in the munici-

pality and shall take effect immediately upon such publication. Resolutions not required to be published shall take effect immediately upon adoption by the proper officials of such municipality. Thirty days after taking effect all resolutions shall be conclusively presumed to have been duly and regularly adopted by such municipality, and to comply with the provisions of this and every other law, and the validity of any such resolution shall not thereafter be questioned by either a party-plaintiff, or a party-defendant, except in a suit, action, or proceeding commenced prior to the expiration of such thirty days. (As amended by P. L. 1932, Ch. 236, and P. L. 1935, Ch. 225.)

206. Subject only to the limitations of this act, such resolution or resolutions supplemental thereto shall determine the terms and the form of notes or bonds to be issued thereunder, and provide for their sale or exchange and their execution and delivery, by such officers of the municipality as shall be therein designated, and it shall be mandatory upon such officers to sell or exchange and execute and deliver such notes or bonds as so determined and provided. (As amended by P. L. 1932, Ch. 236.)

207. All such notes or bonds shall be sold at not less than par at public sale after notice setting forth the terms and conditions of sale, published in such newspaper circulating in the municipality, and in such financial newspaper, as shall be designated by resolution, except in the following cases:

(a) If no bids are received at such public sale, or if all bids are rejected, any notes or bonds or part thereof may with the written assent of the commission be sold without further notice at private sale at any time within six months.

(b) With the approval in writing of the commission, any notes or bonds or part thereof may be exchanged for any notes or bonds, including interest thereon, of the municipality issued under this or any other act. The rate of interest borne by any such notes or bonds may be higher or lower than the rate of interest borne by the notes or bonds surrendered.

(c) With the approval in writing of the commission, any notes or bonds may be issued directly to any creditor of the municipality in absolute and unconditional payment of the indebtedness and interest thereon of such municipality to such creditor, *provided* that notes or bonds shall not be so issued unless and until the amount due such creditor has been determined by the governing body of the municipality and by the commission, nor unless and until the municipality receives from such creditor a release running to the municipality and if such creditor is a party plaintiff in any suit, action or proceeding pending against the municipality relative to such indebtedness, a stipulation of dismissal of such suit, action or proceeding. Such release and such stipulation shall be approved as to form by the counsel to the municipality and by counsel to the commission.

(d) Any notes or bonds, or any part thereof, may be sold without any previous public offering to, and be purchased by, the sinking fund commission or the insurance or pension fund commissioners of the municipality offering the bonds, or be sold to any board, commission or officers of the State, authorized by law to purchase such notes or bonds.

(e) Any notes or bonds payable not more than seven years from their date may be sold at private sale with the written assent of the commission. (As amended by P. L. 1932, Ch. 236.)

208. Unless a suit, action or proceeding questioning the validity of notes or bonds, purporting to be issued by virtue of any such resolution, be commenced prior to the expiration of the thirty-day period hereinabove provided, any such notes or bonds reciting that they are issued pursuant to this act shall, after their issuance and delivery, if no suit relating thereto is then pending, be conclusively presumed to be fully authorized by all the laws of this State and to have been issued, sold, executed and delivered by the municipality in conformity therewith, and shall not be questioned by the municipality or any taxpayer thereof in any court, anything herein or in other statutes to the contrary notwithstanding.

209. In order to conserve the financial resources of the municipality, its governing body without the assent in writing of said commission shall pass no ordinances or resolutions authorizing the issuance of notes or bonds of any kind or character or creating any obligation or indebtedness of the municipality, except tax anticipation or tax revenue notes or bonds for the current year. Nor shall such governing body, without like consent, include in any annual budget or tax ordinance amounts for local expenditures in excess of the like amounts for the preceding annual budget, exclusive of appropriations for the purpose of raising the principal and interest on the public debt. After an appropriation has been approved by the commission, the actual expenditure thereunder shall be made by the municipal authorities; *provided, however,* that no claims whether under appropriations approved by the commission, or included in the annual

budget or tax ordinance, or otherwise, shall be passed for payment by the officers of such municipality until the auditor shall have certified that the same have been examined by him and found to be within appropriations theretofore duly made by the municipality, and that there is or will be available in an appropriate account, sufficient ready funds for such payment. (As amended by P. L. 1932, Ch. 236, and P. L. 1933, Ch. 330.)

209-a. Whenever any municipality in which the commission is functioning has been or shall be in default for twelve months in the payment of interest on any of its bonds or notes or other written evidence of indebtedness (except where the same is under litigation as to its validity, or where the validity thereof has been denied by formal notice given by the municipality, and no suit, action or proceeding to enforce the same has been commenced by the holder); or whenever any such municipality has been or shall be in default for six months in the payment of any part of its regular pay roll, or in the payment of any sums due from the annual tax levy to the State, county or school district, then in any event no subsequent budget or tax ordinance or appropriation for local school purposes shall include any amounts in excess of such limits as may be fixed by the commission, exclusive of appropriations for the purpose of raising the principal and interest on the public debt, and exclusive of appropriations to create a reserve fund under the provisions of section two hundred eleven of this act. (Added by P. L. 1933, Ch. 330.)

209-b. To the end that the principal of and interest on the notes or bonds issued hereunder may be further secured and thereby a more favorable sale or exchange effected, any resolution authorizing the issuance of notes or bonds hereunder may contain provisions which

shall be a part of the contract with the holders of such notes or bonds as to (a) the amount to be included in any budget or tax ordinance or to be appropriated by or raised by taxation in the municipality in each year for debt service and for reserve or sinking funds, which amount may be expressed in dollars, percentage of total assessed valuations or both, or otherwise; (b) the setting aside of reserve or sinking funds, and the amount, securing, regulation, investment, application and disposition thereof; (c) the pledging, depositing or trusteeing of moneys to be applied to the payment of the principal of and interest on the notes or bonds, and the securing of such deposits; (d) the pledging of taxes, special assessments and other revenues or moneys of the municipality, which are due or to become due, directly to the payment of the principal of and interest on the notes or bonds, or to reserve or sinking funds; (e) the use and application of unanticipated income or surplus revenue or both of the municipality; (f) limitations effective for not exceeding ten years from the effective date of such resolution or resolutions on the amount or nature or borrowing or incurring of indebtedness by the municipality; (g) the holding of lawful tax sales of property against which there may then or thereafter be outstanding delinquent taxes or assessments or other charges and the foreclosing of the right of redemption with respect to tax titles theretofore or thereafter purchased by the municipality; (h) the inclusion in any budget of appropriations as reserves for uncollected taxes, and the amount, computation and disposition thereof and of the proceeds of the tax levy therefor; (i) the performance by the municipality of all or any specified provisions of any law relating to the preparation, adoption, and administration of budgets and the levying of taxes in municipalities; (j) appointment of a fiscal agent by the municipality and the powers and duties

hereof; (k) the terms and conditions upon which any uch resolution or any contract entered into thereby may e amended, rescinded or repealed; (1) any other or urther course of conduct on the part of the municipality hich may tend to improve its credit standing. Any unicipality adopting a resolution containing any provi- ion authorized hereunder shall have and possess all of he powers necessary and appropriate for the perform- nce thereof. The provisions of any such resolution hall be enforceable by mandamus or other appropriate ction or proceeding at law or in equity instituted by he commission or by the holder of any note or bond on ehalf of all the holders of such notes or bonds, whether r not there shall have been any default in the payment f the principal of or interest on any such notes or onds. (Added by P. L. 1935, Ch. 225.)

209-c. Any resolution authorizing the issuance of notes or bonds hereunder may provide that any sums required pursuant to such resolution to be set aside by the municipality for reserve or sinking funds shall be paid to the sinking fund commission of such municipal- ity, and all moneys so paid to such commission shall be held and applied by it only as in such resolution pro- vided and shall not be commingled with any other moneys held by such commission. The provisions of an act entitled "An act concerning sinking funds and sink- ing fund commissions," approved March twenty-ninth, one thousand nine hundred and seventeen, as amended and supplemented, in so far as they relate to the crea- tion, setting aside or maintenance of sinking funds and the investment, application and disposition thereof, shall have no application with respect to notes or bonds issued under this act or any reserve or sinking funds provided therefor. (Added by P. L. 1935, Ch. 225.)

209-d. Any resolution authorizing the issuance of notes or bonds hereunder may provide that the notes, bonds or other obligations of the municipality then held by the sinking fund commission thereof shall be cancelled and that other property or funds in the custody of such commission shall be applied to the payment of other indebtedness of the municipality as in such resolution provided, and said commission shall cancel said notes, bonds or other obligations and apply such property or funds accordingly; *provided, however,* that nothing herein contained shall be deemed to permit, without the consent of such holder, the impairment of any rights of the holder of any note, bond or other obligation of the municipality for the security or payment of which any such notes, bonds, obligations, property or funds shall be held. (Added by P. L. 1935, Ch. 225.)

210. All notes or bonds issued under this act may be subject to such terms of redemption, with or without premium, and contain such provisions, conditions and limitations with respect to the acceleration of the obligation to pay the principal thereof upon such default in the payment of interest on or principal of any bonds or notes, or in respect to the provisions concerning debt service and sinking fund payments, as the resolution authorizing their issuance may provide. Any notes or bonds issued under this act in exchange for any instrument issued under this or any other act may be authorized by such resolution to contain a provision that, in case of default in payment of the principal of or interest on any such note or bond, the holder thereof shall not only have all his rights and remedies thereunder, but in addition shall be reinvested with such of the rights or remedies which he would have had were he then the owner and in possession of the instrument in ex-

change for which such note or bond shall have been issued as may be specified in such resolution. Such notes or bonds may contain such reference to any special covenants or provisions contained in the resolution authorizing their issuance and such other terms, conditions or provisions not inconsistent herewith deemed by the commission to give said notes or bonds a higher degree of marketability as the resolution or resolutions determining the form of the notes or bonds may provide. All notes or bonds issued under this act containing any one or more of such references, terms, provisions or conditions shall be deemed negotiable instruments, the provisions or limitations of any other law to the contrary notwithstanding; *provided, however,* that nothing in this section shall be construed to impair the negotiability of any other instruments negotiable under other laws of this State. (Added by P. L. 1932, Ch. 236, and amended by P. L. 1935, Ch. 225, and P. L. 1936, Ch. 50.)

211. Any municipality in which the commission is functioning shall have the power to levy taxes ad valorem upon all taxable property therein for the purpose of paying the principal of and/or interest on any notes, bonds or other obligations or indebtedness of such municipality issued under this or any other law and shall have the power to provide a reserve fund for the payment of said principal and interest, which fund shall be under the immediate jurisdiction of the sinking fund commissioners or of a financial officer, of the municipality, as the commission shall approve. The full faith and credit of any such municipality shall be deemed to be pledged for the punctual payment of the principal of and interest on all notes and bonds issued pursuant to this act. No money shall be withdrawn from said reserve fund or sinking fund for investment or otherwise without the approval of the commission. (Added by P. L. 1932, Ch. 236, and amended by P. L. 1933, Ch. 330.)

212. The governing body of any municipality in which the commission is functioning shall have power to compromise and adjust the whole or any part of any special assessments or taxes delinquent to the municipality; *provided, however,* that nothing in this section shall be construed to impair or affect in any way whatsoever the existing rights and remedies of any holder or holders of a certificate or certificates of tax sale, representing any tax title or titles to lands in such municipality sold on account of delinquent taxes and/or delinquent assessments. No claims of the municipality for taxes or assessments, and interest thereon, in excess of five hundred dollars, shall be compromised without the assent in writing of the Municipal Finance Commission. All moneys received by the municipality by compromise or adjustment of taxes or special assessments shall, if the commission so provide, be paid only to the account of the reserve fund referred to in section two hundred and eleven hereof. (Added by P. L. 1932, Ch. 236, and amended by P. L. 1933, Ch. 330.)

213. The governing body of any municipality in which the commission is or may be functioning may, upon the express consent in writing of the commission, sell, exchange or otherwise dispose of any certificate of tax sale or tax title standing in the name of the municipality, or sell, exchange, lease or otherwise dispose of any real estate or rights or interest therein owned by the municipality and determined by the governing body to be not needed for public use. Any such sale, exchange, lease or other disposition may be authorized by resolution of the governing body and, subject to the consent of the commission as aforesaid, may be at public or private sale, through a broker, agent or otherwise, for cash or upon credit, for such consideration, and subject to such conditions and commissions, as the govern-

ing body in its discretion may determine. All moneys received by the municipality from any such sale, exchange, lease or other disposition shall, if the commission so provide, be paid only to the account of the reserve fund referred to in section two hundred eleven hereof. (Added by P. L. 1936, Ch. 250.)

213.* (a) Any municipality in which the Municipal Finance Commission is functioning may, with the approval of the commission, accept its own bonds and the bonds of the board of education of a co-terminous school district, in payment of all or any part of the purchase price of tax title liens and assessment title liens held by said municipality or in payment of all or any part of the purchase price of real property acquired by such municipality through the foreclosure of such tax title liens and assessment title liens and may exchange such tax title liens and assessment title liens and such real property for such bonds at such times and for such prices as the governing body of such municipality shall determine, subject to the approval of the Municipal Finance Commission. Such municipalities and boards of education may issue refunding bonds in the manner now or hereafter provided in this or any other act for the purpose of refunding all or any part of the balance due to the holders of the bonds presented in payment of said tax title liens and assessment title liens or said real property, and such municipalities and boards of education may also issue non-transferable, non-interest-bearing tax payment certificates in such denominations as may be determined by such municipalities and such boards of education for the purpose of refunding all or any part of the balance due to the holders of the bonds presented in payment of said tax title liens and assessment title liens or said real property, which tax payment

* Duplication of section numbers appears in original.

certificates shall not be payable in cash but shall be acceptable at their face value in payment of future taxes levied by the State, county or municipality and school district for State, county, local municipal and school district purposes; *provided, however,* that said tax payment certificates shall recite on their face that they are non-transferable and non-interest-bearing and not payable in cash but acceptable at their face value only in payment of such future taxes, and provided further that the issuance of such refunding bonds and of such tax payment certificates be approved by the Municipal Finance Commission. It is the intention of this act that such municipalities and boards of education may issue both refunding bonds and tax payment certificates as hereinabove provided in such proportions as may be determined by them, or may issue such refunding bonds only or such tax payment certificates only, as may be determined by them, in payment of all or any part of the balance due to the holders of the bonds presented in payment of the purchase price of said tax title liens and assessment title liens or said real property.

(b) Tax payment certificates issued hereunder shall be authorized and issued in accordance with the procedure for the issuance of refunding bonds, and may be in such form as shall be determined by the governing body of the municipality, and shall be signed by such officers as may be designated by said governing body.

(c) No municipality may avail itself of the authority contained in this section for the acceptance of bonds in payment of the purchase price of real property and tax title liens and assessment title liens except that the sale of such property and liens shall be an integral part of the comprehensive refunding program, which program shall have received the consent of the holders of at least eighty-five per centum of the amount of bonds outstanding. (Added by P. L. 1936, Ch. 265.)

ARTICLE III.

Additional Powers.

301. For the purpose of enabling the commission to carry out this act, the commission shall have power to appoint a secretary and counsel, to employ an auditor and such other assistants, legal, clerical or otherwise, and to fix their duties, terms and service and compensation, and to incur such other expenses as it may deem necessary, but no expenses (other than expenses directly attributable to the municipality such as costs of issuing notes or bonds of the municipality and the costs of audit) shall be incurred exceeding $10,000 in any one municipal fiscal year for any one municipality without the approval of a justice of the Supreme Court. The secretary shall keep minutes of the transactions and proceedings of the commission and shall be the official reporter of the proceedings of the commission. (As amended by P. L. 1932, Ch. 236.)

301-a. The expenses certified from time to time by the commission shall be a legal charge upon the municipality and may be paid by the issuance of emergency notes or bonds, but if not so paid prior to the end of the fiscal year shall be included in the budget of the ensuing year. (Added by P. L. 1932, Ch. 236.)

302. Such auditor shall have an adequate office in the municipal building, if any, and shall have access to all books of account, records, papers and memoranda of such municipality.

302-a. All warrants, checks or other instruments for the withdrawal or transfer of funds of the municipality shall be submitted to such auditor for his countersigna-

ture and no banking institution in which funds of the municipality has heretofore been or shall hereafter be deposited shall honor warrants or checks drawn thereon unless the countersignature of such auditor shall appear on the face of such instruments. (Added by P. L. 1933, Ch. 330.)

303. Notice of all appeals from taxation affecting such municipality shall be given by the county board of taxation to such auditor, and the commission shall be entitled to be represented at hearings on all such appeals.

304. The commission shall from time to time certify to the proper officials of the municipality the amount of its expenses, which amount shall be forthwith raised and paid to the commission.

305. The expense of issuing and selling any notes or bonds under this act, including estimated cost of printing, advertising, attorneys' fees, execution, certification, exchange and delivery, may be included by the commission in the amount of indebtedness to be funded or refunded under this act. (As amended by P. L. 1932, Ch. 236.)

306. The commission shall have the power to require the municipality to cause to be made an assessment and/or reassessment and/or valuation and/or revaluation and/or appraisal and/or reappraisal of the taxable ratables of the municipality as the basis for any subsequent tax levy; and any tax duplicate based on such assessment and/or reassessment and/or valuation and/or revaluation and/or appraisal and/or reappraisal shall be used for all purposes in connection with the levy, apportionment and collection of taxes. For such

urpose and/or purposes the governing body of the unicipality shall have power to employ such experts r appraisers as it may deem advisable. (As amended y P. L. 1931, Ch. 384, and P. L. 1932, Ch. 236.)

307. The cost of such assessment and/or re-assess-ent and/or valuation and/or revaluation and/or ap-raisal and/or reappraisal, whether or not directed by he commission, shall at the request of the governing ody, be included in the amount of indebtedness to be efunded under this act. (As amended by P. L. 1931, h. 384, and P. L. 1932, Ch. 236.)

ARTICLE III-A.

(Added by P. L. 1932, Ch. 236.)

Remedies.

351. Whenever the municipal finance commission hall function in any municipality and so long as it shall ontinue so to do, no judgment, decree, levy or execution gainst such municipality or the property thereof for he recovery of the amount due on any bonds, notes or ther obligations of the municipality, in the payment of hich such municipality has defaulted, shall be enforced ntil otherwise specially ordered by the Supreme Court r a justice thereof in an appropriate proceeding for uch purpose, after notice to the commission, and the nforcement of any such judgment, decree, levy or xecution shall be and it hereby is stayed until other-ise specially ordered as aforesaid. (Added by P. L. 932, Ch. 236, and amended by P. L. 1933, Ch. 330.)

352. Whenever the municipal finance commission hall function in any municipality and so long as it shall

continue so to do, no action or proceeding of any kind either direct or ancillary, by way of mandamus or otherwise shall be brought against such municipality or any public officers for the assessment, levy or collection of taxes by or for such municipality and any and all actions or proceedings therefor shall be and they hereby are stayed; except that first, the Supreme Court or a justice thereof, after notice to the commission, may authorize one or more creditors of such municipality to bring and maintain an action or proceeding therefor in the Supreme Court, which shall be brought for the benefit of themselves and all other creditors of such municipality and in which all other creditors of such municipality shall have the right to intervene and assert their claim and in which all other creditors of such municipality may, and said commission shall, be made parties in such manner and upon such notice as the Supreme Court shall approve; and except that, second, the municipal finance commission may bring and maintain an action or actions by way of mandamus or by any other appropriate proceeding or proceedings for the assessment, levy or collection of taxes by such municipality for the payment of principal and/or interest of the indebtedness of the municipality found to be outstanding as provided in section two hundred and one of this act. Without limiting its power otherwise to direct by mandamus the assessment, levy or collection of taxes, the Supreme Court in any such proceeding may, to the extent which it shall deem just and equitable, afford to the holders collectively of any due and unpaid claims against a municipality any remedy which might be afforded under any other law to any individual creditor in any mandamus proceeding for the assessment, levy or collection of taxes, to the same extent as if there had been an entry of judgment in their favor, issuance of execution and return thereof unsatisfied, service thereof upon

public officials and performance of any and all other conditions precedent to the affording of such relief by mandamus under such other law; *provided, however,* that the court be first satisfied from proof submitted by affidavit or otherwise that the claims for the enforcement of which such remedy is sought are claims upon which a judgment could be obtained. (Added by P. L. 1932, Ch. 236, and amended by P. L. 1933, Ch. 330, and P. L. 1936, Ch. 50.)

353. Whenever the municipal finance commission shall function in any municipality, and so long as it shall continue so to do, it may prepare and certify to the governing body of such municipality resolutions providing in substance that any and all moneys collected as taxes by the municipality over and above an amount sufficient to pay the reasonable current operating expenditures of such municipality (not including therein the principal or interest of any bonds or notes of the municipality) and such capital expenditures, if any, as may be approved by the municipal finance commission as reasonably necessary to preserve the value of the taxable property within such municipality, shall be paid by the municipality to such banks or trust companies as the governing body of the municipality may designate. (Added by P. L. 1932, Ch. 236.)

354. Whenever the municipal finance commission shall function in any municipality and so long as it shall continue to do so, no action or proceeding at law or in equity shall be brought or prosecuted, the purpose of which is to affect the disposition of property or funds owned or controlled by the municipality, except as provided in this act. If any such municipality has in its possession or under its control, or there is in the possession or under the control of the commis-

sion, any property or funds of such municipality which are or may be available for the payment of interest or principal upon any of the debts of such municipality (over and above the payment of the current operating expenses of the municipality and the maintenance of a reasonable working capital), then such municipality in its discretion may apply, or if directed by the commission shall apply, to the Supreme Court to determine the application and distribution of such property or funds to and among the creditors of the municipality, and in any such case the Supreme Court in its discretion may permit an application for relief of the same character to be made by any creditor of the municipality. In any such proceeding all creditors of the municipality shall be made parties thereto in such manner and upon such notice by publication or otherwise as the Supreme Court shall approve, and any creditor may appear therein and assert his rights to receive all or any part of such property or funds. In case any such proceeding shall be instituted, the Supreme Court may direct the municipality to make no payments from any of such moneys so available until the determination of the proceeding or until permitted by the Supreme Court. Unless and until such a direction shall be made, payments may be made by such municipality on account of principal and interest as the municipality may determine and as may be approved by the Municipal Finance Commission. (Added by P. L. 1935, Ch. 191, and amended by P. L. 1935, Ch. 314.)

355. Upon the application of any creditor made upon notice to the municipality and the commission, the Supreme Court may vacate, modify or restrict any statutory stay contained in this article. (Added by P. L. 1936, Ch. 50.)

ARTICLE IV.

Miscellaneous.

401. The act of a majority of the commission shall be deemed the act of the commission. The members of the commission are hereby authorized and empowered to sit singly for the purpose of holding any public hearings. The commission is authorized and empowered to issue subpoenas, signed by a majority of the commission to compel the attendance of witnesses before it, and the production of books, papers and records. It is authorized to hold hearings and administer oaths to witnesses. In the event of failure to obey any subpoena issued as aforesaid, or refusal to answer questions propounded by the commission, such failure or refusal shall be certified to the justice of the Supreme Court, presiding in the circuit wherein such neglect or refusal occurred, which said justice is authorized to impose penalties for such failure or refusal. (As amended by P. L. 1931, Ch. 384, and P. L. 1932, Ch. 236.)

402. Whenever any direction of the commission authorized under this act has not been fully performed or carried out by the officials of the municipality affected, the commission shall have power to perform directly, or cause to be performed by its agents, in the name of the municipality, any act so directed by the commission under the provisions of this statute, including the power to execute, sell, issue and deliver any bonds or notes directed to be issued under a resolution certified in accordance with section 201 of this act.

402-a. The word "certified" as used in this act shall as to resolutions hereafter prepared by the commission and certified to the governing body of a municipality be

construed to mean transmission by first class mail of a copy of a resolution of the commission, accompanied by a certificate substantially in the following form: "The annexed resolution is hereby certified by the municipal finance commission to the (insert name of governing body of municipality) pursuant to chapter three hundred and forty of the pamphlet laws of one thousand nine hundred and thirty-one, as amended." Such certificate shall be signed in the name of the commission by at least a majority of its members under its common seal, and attested by its secretary. (Added by P. L. 1932, Ch. 236.)

403. The commission hereby created shall continue in force in such municipality, and shall exercise the powers and perform the duties herein conferred, until all bonds or notes or other indebtedness of the municipality which has fallen due, and all bonds or notes which will fall due within one year, and the interest thereon, have been paid or funded or refunded, or the payment thereof in cash adequately provided for by a cash reserve, excepting tax anticipation or tax revenue notes or bonds of the current year, at which time its authority under this act shall cease. Thereafter the Commissioner of Municipal Accounts shall have the power to continue the employment of the auditor as provided for in section three hundred one and to exercise the powers of the commission under section two hundred nine, until the gross and net debt of such municipality, including notes or bonds issued under this act, is within all statutory limits, at which time his authority under this act shall cease. (As amended by P. L. 1933, Ch. 330.)

404. The powers granted and the duties imposed by this act shall be construed to be independent and severable. If any one or more sections, clauses, sentences, or

parts of this act shall for any reason be questioned in any court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision so held unconstitutional or invalid.

405. It is declared and enacted that this act is intended by the Legislature to meet the public emergency arising from a default in the payment of municipal obligations, and the resulting impairment of public credit, requiring intervention by the State to provide for the payment of existing obligations in such a way as to cause the least embarrassment to property owners as taxpayers; that this act is remedial in nature, and that the powers hereby granted shall be liberally construed.

406. This act shall take effect immediately, and, as to the subject matters hereof, shall supersede the provisions of all other laws. (As amended by P. L. 1933, Ch. 330.)

SUPPLEMENTS

Chapter 331, Laws 1933

AN ACT to supplement an act entitled "An act concerning municipal finances," approved April twenty-eighth, one thousand nine hundred and thirty-one, constituting chapter three hundred and forty of the laws of one thousand nine hundred and thirty-one.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Whenever, pursuant to the act of which this act is a supplement, the municipal finance commission, hereinafter sometimes referred to as the "commission," shall

function in any municipality, then, upon the verified petition of any creditors of such municipality made on behalf of themselves and all other creditors of the municipality for the approval of a plan of adjustment or composition of the claims of all creditors or of a class or classes of them similarly situated, which plan shall be submitted with and made a part of the petition, the Supreme Court by a justice thereof may take jurisdiction of the subject matter and order the filing of the petition in the office of the clerk of the Supreme Court. The municipality and the commission shall be made parties to such proceeding. All creditors of the municipality shall be made parties thereto by notice to be published and given in such manner as the Supreme Court by its justice may direct. Any creditor of the municipality may appear and assert his rights. In the petition the creditors shall allege that the municipality is or will be unable to pay in full according to their terms the claims proposed to be adjusted or composed and perform its public functions and preserve the value of property subject to taxation; that the adjustment or composition proposed in the plan is substantially measured by the capacity of the municipality to pay, is in the interests of all the creditors affected thereby, and is not detrimental to other creditors of the municipality.

2. In any such proceeding, after hearing on the plan proposed or on the plan as modified by order and if such plan as proposed or modified is approved in writing by creditors representing eighty-five per centum (85%) in amount of the indebtedness affected thereby and by the municipality and the commission, the Supreme Court by a justice thereof may by order authorize and approve such adjustment or composition if the court by its justice determines (1) that the municipality is unable to pay in full according to their terms the claims proposed to be adjusted or composed, and perform its public func-

tions and preserve the value of property subject to taxation, (2) that the adjustment or composition is substantially measured by the capacity of the municipality to pay, (3) that it is in the interest of all the creditors affected thereby, and (4) that it is not detrimental to other creditors of the municipality.

3. The plan of adjustment or composition so authorized and approved shall forthwith and without any further action of any kind be binding upon all the creditors included in such plan, whether or not they appear in such proceeding, and insofar as said plan provides for the substitution of any new bonds, notes, or other obligations of the municipality in place of any outstanding bonds, notes or other obligations or claims then outstanding, such substitution shall be effectual from and after such date as may be fixed in such order.

4. After the institution of any proceeding provided for by this act and pending the determination thereof, the Supreme Court by a justice thereof may by order continue the stay provided by the act of which this act is a supplement. In the event that a plan shall be authorized and approved pursuant to this act, the court shall retain jurisdiction of such proceeding and thereafter no creditor whose claim is included in such adjustment or composition shall be authorized to bring any action or proceeding of any kind or character for the enforcement of his claim except with the permission of the Supreme Court and then only to recover and enforce the rights given to him by such adjustment or composition.

5. Notwithstanding any provisions of this act, the municipal finance commission shall not approve any adjustment or composition, or plan presented pursuant to this act, which provides for the reduction in the principal amount of any outstanding notes or bonds of the municipality.

Approved June 27, 1933.

Chapter 375, Laws 1933

A SUPPLEMENT to an act entitled "An act concerning municipal finances," approved April twenty-eighth, one thousand nine hundred and thirty-one.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. In any case where a justice of the Supreme Court has heretofore or hereafter made an order annulling, vacating and discharging any order theretofore made by such justice pursuant to the provisions of the act entitled "An act concerning municipal finances," approved April twenty-eighth, one thousand nine hundred and thirty-one, adjudging that the municipality has defaulted in the payment of the principal or interest of any of its outstanding notes or bonds, the municipal finance commission constituted upon the filing of such last mentioned order by the provisions of said act shall cease to continue in force in such municipality and neither said commission nor the State Commissioner of Municipal Accounts shall thereafter exercise any powers or perform any duties in and for such municipality pursuant to said act, or any act amendatory thereof or supplemental thereto; *provided, however,* that said municipal finance commission shall have heretofore or hereafter determined by resolution that it is not functioning in said municipality.

2. This act is to take effect immediately.

Approved September 5, 1933.

Chapter 190, Laws 1935

AN ACT to supplement an act entitled "An act concerning municipal finances," approved April twenty-eighth, one thousand nine hundred and thirty-one, constituting chapter three hundred forty of the laws of one thousand nine hundred and thirty-one, as amended.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Whenever, pursuant to the act to which this act is a supplement, the Municipal Finance Commission, hereinafter sometimes referred to as the "commission" shall function in any municipality, any such municipality may file a petition with any United States court of bankruptcy under an act of the Congress of the United States entitled "An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved July first, one thousand eight hundred and ninety-eight, and acts amendatory thereof and supplemental thereto," approved May twenty-fourth one thousand nine hundred and thirty four, for the purpose of effecting a readjustment of its debts. No such petition nor any plan of readjustment in connection therewith shall be filed with the court by any municipality, however, unless the same shall be accompanied by the written approval of the commission, and no plan of readjustment shall be put into temporary effect or finally confirmed without the written approval of the commission of such plan. The municipality shall give the commission at least ten days notice in writing of all hearings and other proceedings before the court of bankruptcy or any special master in connection with any such petition or plan of readjustment.

2. The commission shall have power in its discretion to give its written approval of any petition proposed to be filed by any municipality hereunder and of any plan of readjustment of its debt filed with or in proceedings upon such petition; *provided, however,* that notwithstanding any provision of this act, the commission shall not approve any plan of readjustment which provides for the reduction in the principal amount of any outstanding notes or bonds of such municipality.

3. This act shall take effect immediately.

Approved May 15, 1935.

Chapter 194, Laws 1935

AN ACT to supplement an act entitled "An act concerning municipal finances," approved April twenty-eighth, one thousand nine hundred and thirty-one, constituting chapter three hundred forty of the laws of one thousand nine hundred and thirty-one, as amended.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Whenever, pursuant to the act of which this act is a supplement, the municipal finance commission, hereinafter sometimes referred to as the "commission," shall function in any municipality, then such municipality may with the approval in writing of such commission extend the period theretofore granted for the payment of assessments for benefits for local improvements, by granting to the owner of the property so assessed the privilege of paying in five additional equal annual installments the amount of all such assessments con-

firmed and due and payable, by reason of a default or otherwise, as the date of the resolution hereinafter mentioned, and of the interest thereon and penalties and other charges relating to such assessments accrued to such date. Such action shall be taken by resolution of the governing body of the municipality describing with clearness sufficient for identification the property so affected, the amount of such assessments, interest, penalties and other charges, and the annual dates when the installments of such amount shall thereafter be due and payable. Such resolution shall not take effect until approved in writing by the commission after public notice published in a newspaper having a substantial circulation in the municipality. There need not be a separate resolution for each property or property owner.

2. This act shall take effect immediately.

Approved May 15, 1935.

Chapter 195, Laws 1935

A SUPPLEMENT to an act entitled "An act concerning municipal finances," approved April twenty-eighth, one thousand nine hundred thirty-one, constituting chapter three hundred forty of the laws of one thousand nine hundred thirty-one, as amended and supplemented.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Whenever, pursuant to the act to which this act is a supplement, the municipal finance commission, hereinafter referred to as the "commission," shall function

in any municipality and there is a school district coterminous with such municipality governed by the provisions of article VII of an act entitled "An act to establish a thorough and efficient system of free public schools, and to provide for the maintenance, support and management thereof," approved October nineteenth, one thousand nine hundred and three, hereinafter referred to as the "school law," the commission shall have power from time to time to prepare and certify to the board of education of such school district resolutions providing for the funding or refunding of notes or bonds or other indebtedness of the school district, and the interest thereon, which the commission shall have found, after public hearing, to be outstanding and unpaid and to be due or to become due. Such funding or refunding shall be carried out in accordance with the provisions of the act to which this act is a supplement, and shall not be subject to a referendum or to the other provisions of the school law. Such school district and the board of education thereof shall be subject to all the provisions of the act to which this act is a supplement, as heretofore or hereafter amended or supplemented and the board of education of such school district shall be deemed to be the governing body of such school district within the meaning of and for all the purposes of said act, as so amended and supplemented.

2. This act shall take effect on July first, one thousand nine hundred and thirty-five.

Approved May 15, 1935.

Chapter 292, Laws 1935

AN ACT to supplement an act entitled "An act concerning municipal finances," approved April twenty-eighth, one thousand nine hundred and thirty-one, constituting chapter three hundred forty of the laws of one thousand nine hundred and thirty-one, as amended.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Whenever, pursuant to the act to which this act is a supplement, the municipal finance commission, hereinafter referred to as the "commission," shall function in any municipality, the auditor appointed by the commission in and for such municipality shall, upon the adoption by the commission of a resolution providing therefor, have with respect to such municipality authority to recommend the tentative annual budget to the governing body thereof and to the commission; to review all contracts prior to their execution and their authorization by the governing body; to make recommendations concerning all capital improvements; to attend all meetings of the governing body with the right to take part in discussions but without the right to vote on any matters; to investigate the affairs of any department, officer, department head, employee, subordinate or assistant of such municipality; and to make recommendations with respect to any or all matters aforesaid both to the governing body and to the commission.

[2. Whenever, pursuant to the act to which this act is a supplement, the commission shall function in a municipality, it shall have, in addition to the powers

granted in the foregoing section hereof, the power by resolution to make to the governing body of such municipality recommendations with respect to the annual budget or tax ordinance, and whenever the commission shall deem it necessary in order to conserve the financial resources of the municipality and maintain essential governmental services, it may by resolution determine, after hearing, the maximum amount for any purpose of expenditure or for any estimate of revenue which may be included in any annual budget or tax ordinance and certify the same to the governing body of the municipality and to the county board of taxation, and no appropriation or tax levy for any purpose and no estimate of revenue shall to the extent that it exceeds the maximum amount so fixed by the commission be valid or effective.] (Repealed by P. L. 1936, Ch. 10.)

3. Whenever, pursuant to the act to which this act is a supplement, the commission shall function in a municipality, it shall have, in addition to the powers granted in the foregoing sections hereof, the power, and it shall be its duty, to certify by resolution to the governing body and to the officer or employee concerned any failure on the part of such officer or employee of such municipality to perform any duty imposed upon such officer or employee under the provisions of any statute, local ordinance or regulation. Unless prior to the thirtieth day following the date of such certification, the governing body and the commission shall by resolution declare that such officer or employee has satisfactorily undertaken the performance of such duty, the governing body shall by resolution either remove, or suspend, with or without pay, such officer or employee: *provided, however,* that nothing herein contained shall be deemed to authorize the removal or suspension hereunder without pay of any elected officer, but such officer

may be suspended hereunder with pay for the remainder of his term of office. Upon the removal or suspension hereunder of any officer or employee, it shall be the duty of the governing body, with the concurrence and approval of the commission, to appoint a person or persons satisfactory to the governing body and to the commission to perform the duties of such officer or employee. In the event that no such satisfactory person can be found to perform such duties who is a resident of the municipality, it shall be lawful to appoint a person residing outside of the municipality.

4. Whenever, pursuant to the act to which this act is a supplement, the commission shall function in a municipality, it shall have, in addition to the powers granted in the foregoing sections hereof, the power by resolution to recommend to the governing body of such municipality the appointment of one or more persons to act as special collectors of delinquent taxes or any other revenues in such municipality. Thereupon it shall be the duty of the governing body, with the concurrence and approval of the commission, to appoint a person or persons satisfactory to the governing body and to the commission to act as such special collector or collectors and to fix his or their compensation, and it shall be lawful so to appoint a person or persons residing outside of the municipality.

5. The commission shall have power from time to time by resolution to direct that for such period as may be stated in such resolution the proceeds of any taxes collected, received, or realized in any manner during such period shall be applied equally and ratably to the purposes for which such taxes were levied.

6. Any resolution adopted by the commission pursuant to this act may be certified to the municipality by the commission in the manner provided in section four hundred two-A of the act to which this act is a supplement, and when so certified the provisions of such resolution shall be binding upon such municipality.

7. This act shall take effect immediately.

Approved June 27, 1935.

Chapter 127, Laws of 1936

AN ACT to supplement an act entitled "An act concerning municipal finances," approved April twenty-eighth, one thousand nine hundred and thirty-one, constituting chapter three hundred forty of the laws of one thousand nine hundred and thirty-one, as amended and supplemented.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Article III-A of the act to which this act is a supplement shall not apply to bonds hereafter issued by any municipality pursuant to said act, nor to actions or proceedings for the enforcement of such bonds, nor to the enforcement of any judgment, decree, levy or execution for the recovery of the amount due on such bonds.

2. This act shall take effect immediately.

Approved June 1, 1936.

OTHER ACTS PERTAINING TO THE MUNICIPAL FINANCE COMMISSION

Chapter 382, Laws 1933

AN ACT concerning the investment of moneys or funds by boards, commissions, officers of the State and heads of departments of the State government.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. All boards, commissions, officers of the State and heads of departments of the State Government authorized to invest moneys or funds are hereby authorized to invest moneys or funds in their possession in the notes, bonds or other obligations of any municipality of the State which has heretofore been or shall hereafter be issued pursuant to a resolution adopted by the proper officers of such municipality in a form certified by the municipal finance commission or issued with the approval in writing of such commission.

2. The words "municipal finance commission" shall mean the commission created by an act entitled "An act concerning municipal finances," approved April twenty-eighth, one thousand nine hundred and thirty-one, constituting chapter three hundred and forty of the Pamphlet Laws of one thousand nine hundred and thirty-one, and the acts amendatory thereof and supplemental thereto, and having and exercising with respect to such municipality the powers and duties prescribed by said act.

3. The powers conferred by this act shall be in addition to the powers conferred by every other law and notes, bonds and other obligations may be purchased hereunder notwithstanding the restrictions contained in any other laws.

4. This act shall take effect immediately.

Approved September 5, 1933.

Chapter 154, Laws 1935

AN ACT to amend an act entitled "An Act creating a Department of Municipal Accounts and the office of Commissioner of Municipal Accounts, and defining his duties and powers," approved March twenty-seventh, one thousand nine hundred and seventeen.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. An act entitled "An act creating a Department of Municipal Accounts and the office of Commissioner of Municipal Accounts, and defining his duties and powers," approved March twenty-seventh, one thousand nine hundred and seventeen, be and the same hereby is amended by inserting after section three thereof a new section to be numbered and to read as follows:

3-a. Whenever a municipal finance commission shall be functioning in any municipality pursuant to the provisions of any other law, the Commissioner of Municipal Accounts may issue no order with respect to the budget or the tax ordinance or tax levy of such municipality pursuant to the provisions of subdivision (d) of section three hereof except upon the direction of such municipal finance commission.

2. This act shall take effect immediately.

Approved April 11, 1935.

Chapter 193, Laws 1935

AN ACT concerning the financial difficulties of counties, municipalities, school districts, or other political subdivisions of this State.

WHEREAS, By an act of Congress of the United States entitled "An Act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved July first, one thousand eight hundred and ninety-eight, and acts amendatory thereof and supplementary thereto," approved May twenty-fourth, one thousand nine hundred and thirty-four, the Congress of the United States has undertaken the further exercise of the bankruptcy powers because of the national emergency caused by increased financial difficulties of many local governmental units; and

WHEREAS, Pursuant to said act of the Congress of the United States divers counties, municipalities, school districts or other political subdivisions of this State may desire to effect a readjustment of their debts and to procure the discharge of debts and liabilities provided for in said act; and

WHEREAS, Public and recorded confession that it is insolvent or unable to meet its debts as they mature must be made by any county, municipality, school district or other political subdivision desiring to take action under said act of the Congress of the United States; and

WHEREAS, Said act of the Congress of the United States reserves to the State the power to control the actions of its counties, municipalities, school districts or other political subdivisions under said act; now, therefore,

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Any county, municipality, school district or other political subdivision of this State (hereinafter referred to as "political subdivision") shall have power to file a petition or petitions with any United States court or court in bankruptcy under an act of the congress of the United States entitled "An act to amend an act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved July first, one thousand eight hundred and ninety-eight, and acts amendatory thereof and supplementary thereto," approved May twenty-fourth, one thousand nine hundred and thirty-four (hereinafter referred to as the "municipal bankruptcy act"), for the purpose of effecting a readjustment of its debt. Such petition or petitions shall not be so filed unless the approval of the municipal finance commission constituted by section one hundred two of an act of the Legislature of the State of New Jersey entitled "An act concerning municipal finances," approved April twenty-eight, one thousand nine hundred and thirty-one, constituting chapter three hundred forty of the laws of one thousand nine hundred and thirty-one, as amended and supplemented, which is hereby constituted a commission for the purposes of this act, be first had and obtained.

2. The filing of such petition shall be authorized only by ordinance of the governing body of the political subdivision adopted by the affirmative vote of not less than two-thirds of all the members elected to such governing body, except that in the case of a county or of a school district governed by the provisions of Article VII of an act entitled "An act to establish a thorough and efficient system of free public schools, and to provide for the maintenance, support and management thereof,"

pproved October nineteenth, one thousand nine hun-
red and three, as amended and supplemented, such
iling shall be authorized by resolution of the governing
ody adopted by the affirmative vote of not less than
wo-thirds of all the members elected to such govern-
ng body. For the purposes of this act the board of
ducation of a school district governed by the provisions
f article VII of an act entitled "An act to establish
thorough and efficient system of free public schools,
nd to provide for the maintenance, support and man-
gement thereof," approved October nineteenth, one
housand nine hundred and three, as amended and sup-
lemented, shall be deemed to be the "governing body"
f such school district.

3. No plan of readjustment filed with or in the pro-
eedings upon any such petition shall be approved by
he court or put into temporary effect or finally con-
irmed without the approval of the municipal finance
ommission.

4. The municipal finance commission shall have power
n its discretion to give its approval in the manner
provided by this act to the filing of any petition for
he purpose of effecting readjustment of its debt which
any political subdivision proposes to file, and of any
plan of readjustment filed with or in the proceedings
pon any such petition; *provided, however,* that no such
plan of readjustment shall provide for the reduction of
he principal amount of any outstanding notes or bonds
f the political subdivision nor, without the express
approval in writing of the municipal finance commis-
sion, for the payment of fees, compensation, reimburse-
ment or other allowances for attorneys, agents, com-
mittees, or other representatives of creditors of the
political subdivision. (As amended by P. L. 1935, Ch.
313.)

5. Upon the final confirmation of any plan of readjustment approved by the municipal finance commission, the political subdivision assenting to such plan of readjustment shall have power, by ordinance in the case of a municipality, by resolution in the case of a county, and by resolution of the board of education in the case of a school district governed by the provisions of article VII of an act entitled "An act to establish a thorough and efficient system of free public schools, and to provide for the maintenance, support and management thereof," approved October nineteenth, one thousand nine hundred and three, as amended and supplemented to authorize, issue, sell and deliver such bonds, notes or other obligations and enter into such agreements and do such other acts and things as may be required of it pursuant to said plan of readjustment. The full faith and credit of the political subdivision shall be deemed to be pledged for the payment of such notes, bonds or other obligations. Such ordinance or resolution, as the case may be, shall not take effect until approved by the municipal finance commission, and shall provide for the issuance of bonds in one or more series, bearing such date or dates, maturing at such time or times, bearing interest at such rate or rates of interest, not exceeding six per centum (6%) per annum, payable at such time or times, in such denominations, in such form, either coupon or registered, carrying such registration privileges, payable in such medium of payment at such place or places, subject to such terms of redemption, with or without premium, as the municipal finance commission may approve.

6. The approval of any petition, plan of readjustment or other papers to be filed in any United States court or court in bankruptcy, or of any ordinance or resolution shall be requested by filing in the office of the

municipal finance commission a certified copy of a resolution of the governing body of the political subdivision adopted by the affirmative vote of not less than two-thirds of all the members elected to such governing body, requesting such approval, together with a true and correct transcript duly certified of any proceedings relating to such petition, plan of readjustment, other papers, ordinance or resolution, and the authorization thereof, accompanied by, in the case of documents to be filed in the United States court or court in bankruptcy, the original and one certified copy of such documents, and in the case of an ordinance or resolution, two certified copies of such ordinance or resolution. The approval of the municipal finance commission under this act of any petition, plan of readjustment or other papers filed or to be filed in a United States court or court in bankruptcy, shall be evidenced only by written endorsement thereof on the petition, plan of readjustment or other papers so filed and the approval of the municipal finance commission under this act of any ordinance or resolution of the governing body of any political subdivision shall be evidenced only by written endorsement thereof on a certified copy of such ordinance or resolution.

7. This act shall take effect immediately.

Approved May 15, 1935.

Chapter 258, Laws 1935

AN ACT to supplement an act entitled "An act to establish a thorough and efficient system of free public schools, and to provide for the maintenance, support and management thereof," approved October nineteenth, one thousand nine hundred and three.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. School districts to which applicable; power to fund or refund debts. Whenever, pursuant to an act entitled "An act concerning municipal finances," approved April twenty-eighth, one thousand nine hundred thirty-one, constituting chapter three hundred forty of the laws of one thousand nine hundred thirty-one, as amended and supplemented, hereinafter referred to as the "commission act", the municipal finance commission, hereinafter referred to as the "commission", shall function in a municipality having a school district coterminous therewith which is governed by the provisions of Article VII of the act to which this act is a supplement, hereinafter referred to as the "school law", the commission shall have power from time to time to prepare and certify to the board of education of such school district, in the manner and mode of procedure provided in the commission act, resolutions providing for the funding or refunding of notes or bonds or other indebtedness of such school district, and the interest thereon, which the commission shall have found after public hearing to be outstanding and unpaid and to be due or to become due. The commission may include in the amount of indebtedness to be funded or refunded the expense of issuing

and selling notes or bonds hereunder, including the estimated cost of printing, advertising, attorney's fees, execution, certification, exchange and delivery.

2. Public hearings on resolution; adoption. Any proposed resolution providing for the issuance of notes or bonds, if such notes or bonds are payable more than one year from the date of issue, shall be certified as aforesaid only after a public hearing by the commission; but no resolution or amendment thereto determining or altering the form of notes or bonds or providing for their sale, execution or delivery shall require any public hearing before such certification.

3. Adoption upon direction of commission. Such resolutions shall, on direction of the commission, be adopted by the board of education of such school district, by the vote of a majority of the members thereof, in the form certified by the commission.

4. Other laws inapplicable. Such resolutions and any notes or bonds authorized to be issued thereunder shall not be subject to a referendum of the legal voters of the school district or to the limitations or other provisions of any other act.

5. Form of notes or bonds. Subject only to the limitations of this act, such resolution or resolutions supplemental thereto shall determine the terms and the form of notes or bonds to be issued thereunder. Such notes or bonds may be subject to such terms of redemption, with or without premium, and contain such provisions, conditions and limitations with respect to the acceleration of the obligation to pay the principal thereof upon such default in the payment of the interest on or principal of any bonds or notes, or in respect to the pro-

visions concerning debt service and sinking fund payments, as the resolution authorizing their issuance may provide. Any notes or bonds issued under this act in exchange for any instrument issued under any other act may be authorized by such resolution or resolutions to contain a provision that, in case of default in payment of the principal of or interest on any such note or bond, the holder thereof shall not only have all his rights and remedies thereunder, but in addition shall be reinvested with such of the rights or remedies which he would have had were he then the owner and in possession of the instrument in exchange for which such note or bond shall have been issued, as may be specified in such resolution. Such notes or bonds may contain such reference to any special covenants or provisions contained in the resolution authorizing their issuance and such other terms, provisions or conditions not inconsistent herewith as may be deemed by the commission to give said notes or bonds a higher degree of marketability as the resolution or resolutions determining the form of the notes or bonds may provide. All notes or bonds issued under this act containing any one or more of such references, terms, provisions, or conditions shall be deemed negotiable instruments, the provisions or limitations of any other law to the contrary, notwithstanding; *provided, however,* that nothing in this section shall be construed to impair the negotiability of any other instruments negotiable under other laws of this State. (As amended by P. L. 1936, Ch. 251.)

6. Collateral agreements. To the end that the principal of and interest on the notes or bonds issued hereunder may be further secured and thereby a more favorable sale or exchange effected, any resolution authorizing the issuance of notes or bonds hereunder may contain provisions which shall be a part of the contract with

he holders of such notes or bonds as to (a) the amount
be raised by taxation in the school district in each
ear for debt service and for reserve or sinking funds
hich amount may be expressed in dollars, percentage
f total assessed valuations or both, or otherwise; (b)
he setting aside of reserve or sinking funds and the
mount, source, securing, regulation, investment, appli-
tion and disposition thereof; (c) the pledging, de-
siting or trusteeing of moneys to be applied to the
ayment of the principal of and interest on the notes
r bonds, and the securing of such deposits; (d) the
edging of taxes and other revenues or moneys of the
hool district directly to the payment of the principal
f and interest on the notes or bonds, or to reserve or
nking funds; (e) limitations effective for not exceed-
g ten years from the effective date of such resolution
r resolutions on the amount or nature of borrowing or
curring of indebtedness by the school district; (f)
ppointment of a fiscal agent by the school district and
he powers and duties thereof; (g) the terms and condi-
ons upon which such resolution or resolutions or any
ontract entered into thereby may be amended, rescinded
r repealed; (h) any other or further course of conduct
n the part of the school district which may tend to im-
rove its credit standing. Any school district adopting
resolution containing any provision authorized here-
nder shall have and possess all of the powers neces-
ary and appropriate for the performance thereof. The
rovisions of any such resolution shall be enforceable
y mandamus or other appropriate action or proceeding
t law or in equity instituted by the commission or by
he holder of any note or bond on behalf of all the
olders of such notes or bonds, whether or not there
hall have been any default in the payment of the prin-
pal of or interest on any such notes or bonds. (As
mended by P. L. 1936, Ch. 251.)

6 (a) Sinking fund commission. Any resolution authorizing the issuance of notes or bonds hereunder may provide that any sums required pursuant to such resolution to be set aside by the school district for reserve or sinking funds shall be paid to the sinking fund commission of such school district, and all moneys so paid to such commission shall be held and applied by it only as in such resolution provided and shall not be commingled with any other moneys held by such commission. The provisions of an act entitled "An act concerning sinking funds and sinking fund commissions," approved March twenty-ninth, one thousand nine hundred and seventeen, as amended and supplemented, in so far as they relate to the creation, setting aside or maintenance of sinking funds and the investment, application and disposition thereof, shall have no application with respect to notes or bonds issued under this act or any reserve or sinking funds provided therefor. (Added by P. L. 1936, Ch. 251.)

6 (b) Release of sinking funds. Any resolution authorizing the issuance of notes or bonds hereunder may provide that the notes, bonds or other obligations of the school district then held by the sinking fund commission thereof shall be cancelled and that other property or funds in the custody of such commission shall be applied to the payment of other indebtedness of the school district as in such resolution provided, and said commission shall cancel said notes, bonds or other obligations and apply such property or funds accordingly; *provided, however,* that nothing herein contained shall be deemed to permit, without the consent of such holder, the impairment of any rights of the holder of any note, bond or other obligation of the school district for the security or payment of which any such notes, bonds, obligations, property or funds shall be held. (Added by P. L. 1936, Ch. 251.)

7. Sale or exchange of notes or bonds. Subject only to the limitations of this act, such resolution or resolutions supplemental thereto shall provide for the sale or exchange and the execution and delivery by such officers of the school district as shall be therein designated, of the notes or bonds to be issued thereunder, and it shall be mandatory upon such officers to sell or exchange and execute and deliver such notes or bonds as so determined and provided.

8. Conditions of sale or exchange. All such notes or bonds shall be sold at not less than par at public sale after notice setting forth the terms and conditions of sale, published in such newspapers circulating in the school district, and in such financial newspaper, as shall be designated by any such resolution, except in the following cases:

(a) If no bids are received at such public sale, or if all bids are rejected, any notes or bonds or part thereof may with the written assent of the commission be sold without further notice at private sale at any time within six months.

(b) With the approval in writing of the commission, any notes or bonds or part thereof may be exchanged for any notes or bonds, including interest thereon, of the school district issued under this or any other act. The rate of interest borne by any such notes or bonds may be higher or lower than the rate of interest borne by the notes or bonds surrendered.

(c) With the approval in writing of the commission, any notes or bonds may be issued directly to any creditor of the school district in absolute and unconditional payment of the indebtedness and interest thereon of such school district to such creditor, provided that notes or bonds shall not be so issued unless and until the amount

due such creditor has been determined by the board of education and by the commission, nor unless and until the school district receives from such creditor a release running to the school district and if such creditor is a party-plaintiff in any suit, action or proceeding pending against the school district relative to such indebtedness, a stipulation of dismissal of such suit, action or proceeding. Such release and such stipulation shall be approved as to form by counsel to the school district and by counsel to the commission.

(d) Any notes or bonds, or any part thereof, may be sold without any previous public offering to, and be purchased, by any sinking fund commission or the insurance or pension fund commissioners of the school district offering the bonds, or be sold to any board, commission or officers of the State, authorized by law to purchase such notes or bonds.

(e) Any notes or bonds payable not more than seven years from their date may be sold at private sale with the written assent of the commission.

9. Effect of resolutions. Excepting resolutions determining or altering the form of notes or bonds or providing for their sale, execution and delivery, and resolutions amendatory thereof or supplemental thereto, such resolutions adopted by the board of education shall be published in a newspaper circulating in the school district and shall take effect immediately upon such publication. Resolutions not required to be published shall take effect immediately upon adoption by the board of education. Thirty days after taking effect all resolutions shall be conclusively presumed to have been duly and regularly adopted by the board of education, and to comply with the provisions of this and of every other law; and the validity of any such resolution shall not

ereafter be questioned by either a party-plaintiff or a arty-defendant, except in a suit, action or proceeding ommenced prior to the expiration of such thirty days; nd unless a suit, action or proceeding questioning the alidity of notes or bonds purporting to be issued by irtue of any such resolution be commenced prior to the xpiration of such thirty-day period, any such notes or onds reciting that they are issued pursuant to this act all, after their issuance and delivery, if no suit relat- g thereto is then pending, be conclusively presumed to e fully authorized by all the laws of this State and to ave been issued, sold, executed and delivered by the hool district in conformity therewith and shall not be estioned by the school district or any taxpayer or gal voter thereof in any court, anything herein or in y other statutes to the contrary notwithstanding. As amended by P. L. 1936, Ch. 251.)

10. Power to raise taxes for payment of obligations sued hereunder. Any school district which shall have sued any notes or bonds pursuant to this act shall ve the power to raise by a district tax any sum or ms for the purpose of providing for the payment of e interest thereon and the principal thereof and for e setting aside of necessary reserve or sinking funds erefor. The full faith and credit of such school dis- ict shall be deemed to have been pledged for the punc- al payment of interest on and principal of all notes d bonds issued pursuant to this act.

11. Additional indebtedness and expenditures limited. order to conserve the financial resources of the school trict, neither the legal voters nor the board of educa- n thereof, without the assent in writing of the com- ission, shall issue or authorize the issuance of notes or nds of any kind or character, or create any obligation

or indebtedness of the school district, except pursuant to subdivision XIV of section eighty-six of the school act. Nor shall any action taken by the legal voters of the school district be effective in so far as it purports to raise by tax in any year any sum or sums for any purpose or purposes, except to provide for the payment of the interest on or principal of any debt or obligation of such school district or for the setting aside of necessary reserve or sinking funds therefor, in excess of the sum or sums voted to be raised by tax for like purposes in the preceding year without like assent of the commission.

12. Further limitations on expenditures. Whenever such school district, or the municipality with which such school district is coterminous, has been or shall be in default for twelve months in the payment of interest on any of its bonds or notes or other written evidence of indebtedness (except where the same is under litigation as to its validity, or where the validity thereof has been denied by formal notice given by the school district or municipality, and no suit, action or proceeding to enforce the same has been commenced by the holder); or whenever any such school district or municipality has been or shall be in default for six months in the payment of any part of its regular pay roll, or, in the case of the municipality, in the payment of any sums due from the annual tax levy to the State, county or school district, then in any event no action taken by the legal voters of the school district shall be effective in so far as it purports to raise by tax in any year any sum or sums for any purpose or purposes, except to provide for the payment of the interest on or principal of any debt or obligation of such school district or for the setting aside of necessary reserve or sinking funds therefor, in excess of such limits as may be fixed by the commission.

13. Assistants of commission; expenses. For the purpose of enabling the commission to carry out this act, the commission shall have power to employ an auditor and such other assistants, legal, clerical or otherwise, and to fix their duties, terms of service and compensation and to incur such other expenses as it may deem necessary, but no expenses (other than expenses directly attributable to the school district such as the costs of issuing the obligations of the school district and the costs of audit) shall be incurred exceeding ten thousand dollars ($10,000.00) for any one school district in any fiscal year of such school district without the consent of a justice of the Supreme Court.

14. Powers and duties of auditors. Whenever the commission shall certify to the board of education that it intends to exercise the powers conferred by this section, thereafter no claims shall be passed for payment by the board of education or other officers of the school district until the auditor of the commission shall have certified that the same have been examined by him and found to be within the amount voted to be raised by tax therefor, and that there is or will be available in an appropriate account sufficient ready funds for its payment. Furthermore, thereafter all warrants, checks or other instruments for the withdrawal or transfer of funds of the school district shall be submitted to such auditor for his counter-signature and no banking institution in which funds of the school district have heretofore been or shall thereafter be deposited shall honor warrants or checks drawn thereon unless the counter-signature of such auditor shall appear on the face of such instruments. The board of education shall provide an adequate office for such auditor, who shall have access to all books of account, records, papers and memoranda of such school district.

15. Expenses to be paid by school district. The commission shall from time to time certify to the board of education the amount of its expenses, which amount shall be a legal charge upon the school district payable to the commission, and may be raised by the issuance of notes by the board of education, but the amount so certified, if remaining unpaid, and the amounts of any notes so issued shall be included by the board of education, without any authorization by the legal voters of the school district, in the next succeeding amount certified to the county board of taxation as the amount to be raised by taxation for the purposes of the school district.

16. Power of commission to act directly. Whenever any direction of the commission authorized under this act has not been fully performed or carried out by the board of education or other officials of the school district affected, the commission shall have power to perform directly, or cause to be performed by its agents, in the name of the school district, any act so directed by the commission under the provisions of this act, including the power to execute, sell, issue and deliver any notes or bonds directed by the commission to be issued by the school district for the funding or refunding of its indebtedness in the manner and mode of procedure provided by the commission act for the issuance of notes or bonds by a municipality.

17. Remedies. Whenever the commission shall function in a municipality having a school district coterminous therewith which is governed by the provisions of Article VII of the school law,

(a) no judgment, decree, levy or execution against such school district or the property thereof for the recovery of the amount due on any bonds, notes or other

obligations of the school district, in the payment of which such school district has defaulted shall be enforced until otherwise specially ordered by the Supreme Court or a justice thereof in an appropriate proceeding for such purpose, after notice to the commission, and the enforcement of any such judgment, decree, levy or execution shall be and it hereby is stayed until otherwise specially ordered as aforesaid;

(b) no action or proceeding of any kind either direct or ancillary, by way of mandamus or otherwise, shall be brought against such school district, municipality, or any public officers for the assessment, levy or collection of taxes for such school district and any and all actions or proceedings therefor shall be and they hereby are stayed except that first, the Supreme Court or a justice thereof, after notice to the commission may authorize one or more creditors of such school district to bring and maintain an action or proceeding therefor in the Supreme Court, which shall be brought for the benefit of themselves and all other creditors of such school district and in which all other creditors of such school district shall have the right to intervene and assert their claim and in which all other creditors of such school district may, and said commission shall, be made parties in such manner and upon such notice as the Supreme Court shall approve; and except that, second, the commission may bring and maintain an action or actions by way of mandamus or by any other appropriate proceedings or proceedings for the assessment, levy or collection of taxes for such school district for the payment of principal and/or interest of the indebtedness of the school district found to be outstanding as provided in section one of this act; without limiting its power otherwise to direct by mandamus the assessment, levy or collection of taxes, the Supreme Court in any such proceedings may, to the extent which it shall deem just and

equitable, afford to the holders collectively of any due and unpaid claims against a school district any remedy which might be afforded under any other law to any individual creditor in any mandamus proceeding for the assessment, levy or collection of taxes, to the same extent as if there had been an entry of judgment in their favor, issuance of execution and return thereof unsatisfied, service thereof upon public officials and performance of any and all other conditions precedent to the affording of such relief by mandamus under such other law; *provided, however,* that the court be first satisfied from proof submitted by affidavit or otherwise that the claims for the enforcement of which such remedy is sought are claims upon which a judgment could be obtained; (As amended by P. L. 1936, Ch. 251.)

(c) no action or proceeding at law or in equity shall be brought or prosecuted, the purpose of which is to affect the disposition of property or funds owned or controlled by the school district, except as herein provided; if any such school district has in its possession or under its control, or there is in the possession or under the control of the commission, any property or funds of such school district which are or may be available for the payment of interest or principal upon any of the debts of such school district (over and above the payment of the current operating expenses of the school district and the maintenance of a reasonable working capital), then such school district in its discretion may apply, or if directed by the commission shall apply, to the Supreme Court to determine the application and distribution of such property or funds to and among the creditors of the school district, and in any such case the Supreme Court in its discretion may permit an application for relief of the same character to be made by any creditor of the school district; in any such proceedings all creditors of the school district shall be made

parties thereto in such manner and upon such notice by publication or otherwise as the Supreme Court shall approve, and any creditor may appear therein and assert his rights to receive all or any part of such property or funds; in case any such proceeding shall be instituted, the Supreme Court may direct the municipality to make no payments from any of such moneys so available until the determination of the proceeding or until permitted by the Supreme Court; unless and until such a direction shall be made, payments may be made by such municipality on account of principal and interest as the municipality may determine and as may be approved by the Municipal Finance Commission;

(d) upon the application of any creditor, made upon notice to the school district and the commission, the Supreme Court may vacate, modify or restrict any statutory stay contained in this article. (As amended by P. L. 1936, Ch. 251.)

18. Plan of adjustment of debts. (1) Whenever the commission shall function in any municipality having a school district coterminous therewith which is governed by the provisions of Article VII of the school law, then, upon the verified petition of any creditors of such school district made on behalf of themselves and all other creditors of the school district for the approval of a plan of adjustment or composition of the claims of all creditors or of a class or classes of them similarly situated, which plan shall be submitted with and made a part of the petition, the Supreme Court by a justice thereof may take jurisdiction of the subject matter and order the filing of the petition in the office of the clerk of the Supreme Court. The school district and the commission shall be made parties to such proceeding. All creditors of the school district shall be made parties

thereto by notice to be published and given in such manner as the Supreme Court by its justice may direct. Any creditor of the school district may appear and assert his rights. In the petition the creditors shall allege that the school district is or will be unable to pay in full according to their terms the claims proposed to be adjusted or composed and perform its public functions and preserve the value of property subject to taxation; that the adjustment or composition proposed in the plan is substantially measured by the capacity of the school district to pay, is in the interests of all the creditors affected thereby, and is not detrimental to other creditors of the school district or of the municipality.

(2) In any such proceeding, after hearing on the plan proposed or on the plan as modified by order and if such plan as proposed or modified is approved in writing by creditors representing eighty-five per centum (85%) in amount of the indebtedness affected thereby and by the school district and the commission, the Supreme Court by a justice thereof may by order authorize and approve such adjustment or composition if the court by its justice determines (1) that the school district is unable to pay in full according to their terms the claims proposed to be adjusted or composed, and perform its public functions and preserve the value of property subject to taxation, (2) that the adjustment or composition is substantially measured by the capacity of the school district to pay, (3) that it is in the interest of all the creditors affected thereby, and (4) that it is not detrimental to other creditors of the school district or of the municipality.

(3) The plan of adjustment or composition so authorized and approved shall forthwith and without any further action of any kind be binding upon all the creditors

included in such plan, whether or not they appear in such proceeding, and insofar as said plan provides for the substitution of any new bonds, notes, or other obligations of the school district in place of any outstanding bonds, notes or other obligations or claims then outstanding, such substitution shall be effectual from and after such date as may be fixed in such order.

(4) After the institution of any proceeding provided for by this section and pending the determination thereof, the Supreme Court by a justice thereof may by order continue the stay provided by the act of which this act is a supplement. In the event that a plan shall be authorized and approved pursuant to this act, the court shall retain jurisdiction of such proceeding and thereafter no creditor whose claim is included in such adjustment or composition shall be authorized to bring any action or proceeding of any kind or character for the enforcement of his claim except with the permission of the Supreme Court and then only to recover and enforce the rights given to him by such adjustment or composition.

(5) Notwithstanding any provisions of this act, the commission shall not approve any adjustment or composition or plan presented pursuant to this section, which provides for the reduction in the principal amount of any outstanding notes or bonds of the school district.

19. Act severable. The powers granted and the duties imposed by this act shall be independent and severable. If any one or more sections, clauses, sentences or parts of this act shall for any reason be questioned in any court, and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision so held unconstitutional or invalid.

20. Act remedial. It is declared and enacted that this act is intended by the Legislature to meet the public emergency arising from a default in the payment of municipal and school district obligations, and the resulting impairment of public credit requiring intervention by the State to provide for the payment of existing obligations in such a way as to cause the least embarrassment to property owners as taxpayers; that this act is remedial in nature, and that the powers hereby granted shall be liberally construed.

21. Act effective. This act shall take effect immediately, and, as to the subject matters thereof, shall supersede the provisions of all other laws.

Approved June 8, 1935.

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Supreme Court of the United States

OCTOBER TERM, 1938.

No. 448

DAVID T. WILENTZ, J. H. THAYER MARTIN AND WALTER R. DARBY, ETC., *et al.*,

Appellants,

vs.

SOVEREIGN CAMP, WOODMEN OF THE WORLD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

REPLY BRIEF FOR APPELLANTS.

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INDEX.

PAGE

Answer to Appellee's Points I and III:

"The District Court did not err in enjoining the Municipal Finance Commission from functioning in the Borough and School District insofar as such functioning affects the appellee in the enforcement of its judgment, or in declaring the stay provisions of the Municipal Finance Commission Act unconstitutional", and

"The District Court did not err in enjoining the acceptance of bonds in payment of taxes and in its ruling as to the rights of appellee in that respect" 1

Does the Act forestall creditors as a whole or merely forestall a race of diligence? Is the plaintiff upholding the cause of the creditors as a whole or merely seeking a preference for itself? 5

a. The litigation in which the Commission has taken part 5

b. The rule of *Christmas* v. *Asbury Park*. 8

c. Does the plaintiff seek a preference or the same thing by another name? 11

d. The Act did not affect existing priorities 14

e. The judgment-creditor never had any priority 15

Answer to Appellee's Point II:

"The District Court did not err in its rulings as to the statutes governing the enforcement of appellee's judgment" 21

Answer to Appellee's Point IV:

"The three-judge court had jurisdiction of the cause" 22

AUTHORITIES CITED.

Cases Cited.

PAGE

Asbury Park v. *United States ex rel. Albert G. Christmas, Nolan Harrigan and Edwin H Barker*, 78 F. 2d 1003 (C. C. A. 3, 1935), *cert.* den. 296 U. S. 624 (1935) 6, 7, 8, 9, 10, 12

Barker v. *Fort Lee*, D. C. D. N. J., unreported 6
Barker v. *North Bergen*, D. C. D. N. J., unreported... 6, 7
Bayonne v. *State (Kingsland, Pros.)*, 41 N. J. Law 368 (E. & A. 1879) 15
Booth v. *Parnell*, 12 N. J. Misc. 413, 172 Atl. 50 (Supr. 1934) 15
Brownsville v. *Loague*, 129 U. S. 493 (1889) 15

Clay County v. *McAleer*, 115 U. S. 616 (1885) 16
Columbus, Town of v. *Barringer*, 85 F. 2d 908 (C. C. A. 4, 1936) 14

Delaware Township v. *Central-Penn National Bank of Philadelphia*, 79 F. 2d 255 (C. C. A. 3, 1935) 6, 7

Gabler v. *Elizabeth*, 42 N. J. Law 79 (Supr. 1880) .. 15, 17, 19
Gully v. *Interstate Natural Gas Co.*, 292 U. S. 16 (1934) 23

Healy v. *Ratta*, 289 U. S. 701 (1933) 23

Moran v. *State ex rel. Montgomery*, 111 Fla. 429, 149 So. 477 (1933) 13
Morris, Mather & Co. v. *Port of Astoria*, 141 Ore. 251, 15 P. 2d 385 (1932) 14

New Orleans Board of Liquidation v. *Hart*, 118 U. S. 136 (1885) 12

Phelps v. *Borough of Fort Lee*, 14 N. J. Misc. 895, 188 Atl. 689 (Supr. 1936), aff'd. 118 N. J. Law 181, 191 Atl. 836 (E. & A. 1937) 12

PAGE

Piscataway Township v. *First National Bank of Dunellen*, 111 N. J. Law 412, 168 Atl. 757 (E. & A. 1933) 16

Pittsburg Steel Company v. *Baltimore Equitable Society*, 226 U. S. 455 (1913) 8

Rippel v. *Asbury Park*, 118 N. J. Law 45, 190 Atl. 489 (Supr. 1937) 7, 9

Ross v. *Walton*, 63 N. J. Law 435, 44 Atl. 430 (Supr. 1899) 16

Sarasota, City of v. *State ex rel. Evans*, 127 Fla. 126, 172 So. 738 (1937) 11

State ex rel. Water Commissioners v. *Brewster*, 42 N. J. Law 125 (Supr. 1880) 15

State ex rel. Gillespie v. *Carlton*, 103 Fla. 810, 138 So. 612 (1931) 13

State ex rel. Coe v. *Englewood*, 68 N. J. Law 559, 53 Atl. 562 (Supr. 1902) 16

State ex rel. Phelps v. *Fort Lee*, Supr. Ct. N. J. 1938, unreported 14, 15, 16

State ex rel. Buckwalter v. *Lakeland*, 112 Fla. 200, 150 So. 508 (1933) 11

Tipping v. *Dougherty*, 11 N. J. Misc. 931, 169 Atl. 671 (Supr. 1933) 16

United States ex rel. Norfolk & Western Railway Co. v. *Township of Chester*, D. C. D. N. J., unreported .. 6, 7

United States v. *Dern*, 289 U. S. 352 (1933) 9

United States ex rel. Sovereign Camp, Woodmen of the World v. *Board of Education of Runnemede*, D. C. D. N. J. unreported 7

United States ex rel. Metzger v. *Vero Beach*, 90 F. 2d 70 (C. C. A. 5, 1937) 10

Vanderpoel v. *Borough of Mt. Ephraim*, 111 N. J. Law 423, 168 Atl. 575 (E. & A. 1933) 11

Wright v. *Vinton Branch*, 300 U. S. 440 (1937) 8

Statutes Cited.

Act concerning Municipal Finances
Sections: PAGE
352 14
354 7
355 8
2 Comp. Stats. (1910) 2255, Sec. 34 ..... 17, 19
Execution Act
Sections:
34 ..... 17, 19
35 ..... 19, 22
N. J. Laws of 1918, Ch. 236, Sec. 505 .....17, 18, 21, 22
New Jersey Revised Laws (1877), Executions, Sec. 9. 17, 19
School Law, Sec. 237 ..... 21, 22
Tax Law of 1918, Sec. 505 .....17, 18, 21, 22

Law-Journal Cited.

13 N. Y. U. Law Q. Rev. 454 14

References to Appellee's Brief.

Appellee's Brief
10 5
11 7
17 19
20 8
22 12
23 10
28 1
34 14
35 ..... 17, 19
40 11
48 .....2, 11, 14
50 12
51–52 ..... 4, 13
53 4
54 4
57–58 5
58–59 2
77 23

Supreme Court of the United States,

October Term, 1938.

DAVID T. WILENTZ, J. H. THAYER MARTIN and WALTER R. DARBY, ETC., *et al.*,

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vs.

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"The District Court did not err in enjoining the Municipal Finance Commission from functioning in the Borough and School District insofar as such functioning affects the appellee in the enforcement of its judgment, or in declaring the stay provisions of the Municipal Finance Commission Act unconstitutional", and

"The District Court did not err in enjoining the acceptance of bonds in payment of taxes and in its ruling as to the rights of appellee in that respect."

The plaintiff in its brief takes the position that the Act Concerning Municipal Finances and the Commission's activities, instead of being intended to eliminate the evils of the race of diligence and to realize for all of the creditors the greatest amount which an insolvent municipality can pay, were intended merely to forestall the collection of defaulted municipal bonds (p. 28). Plaintiff protests

that it is not seeking a preference over other creditors (p. 48).

If these claims are correct, they may well be determinative of this case. They therefore warrant a most careful consideration.

The plaintiff expresses its theory on pages 58-59 of the brief as follows:

> "So, we find in the operations of this Borough, the same vicious circle which was being followed in the cases above cited. The Borough under the protection of and with the active assistance of the Municipal Finance Commission, was withholding payment of any kind on the outstanding bonds, and resisting in court all efforts of creditors to obtain any payment thereon, the effect of such action being to depress the value, and, consequently, the market price of the securities of the borough and school district. This permitted taxpayers including officers of the Borough, to purchase bonds at these depressed prices for use in paying their taxes to the tune of $62,000 (R. 171); it also permitted the borough to purchase such bonds to the extent of $74,000 face amount at such depressed prices with funds on hand (R. 184) which should have been applied in *pro rata* payments on all the defaulted bonds of the borough, and prevented the accumulation of additional tax money for servicing the debt of the borough and school district."

The charges made are in substance these:

(1) The Municipal Finance Commission in the case of this municipality and others resisted not merely attempts of creditors to obtain preferences but also all efforts of creditors to obtain any payment on outstanding bonds.

(2) Consequently, the market price of the securities was depressed.

(3) This permitted taxpayers to purchase bonds at depressed prices for use in paying taxes, which, in turn, prevented the accumulation of additional tax money for servicing the debt.

(4) It permitted the borough to purchase bonds at depressed prices with funds which should have been applied in pro rata payments on all defaulted bonds of the borough.

(1)

As the first of these charges is the only one which merits any extended discussion, we will answer the others first and postpone its consideration to the section of this brief headed: "Does the Act forestall creditors as a whole or merely forestall a race of diligence? Is the plaintiff upholding the cause of the creditors as a whole or merely seeking a preference for itself?"

(2)

The claim that the market price of the securities was depressed is sufficiently answered by he determination below. The plaintiff in its bill of complaint alleges that as a result of the enactment of the Act Concerning Municipal Finances and the functioning of the Commission "a cloud of unenforceability has been publicly cast upon complainant's bonds, that the market value of complainant's bonds has been greatly depreciated * * *" (R. 15). The court below made the following finding of fact (R. 92):

> "11. Although the evidence produced by complainant relating to the effect of the legislation claimed to be unconstitutional upon the value of municipal securities is undisputed, it is not sufficient to establish the fact claimed by complainant that said legislation has publicly cast a cloud of unenforceability, or that by reason thereof the market value of complainant's bonds has been greatly depreciated."

No appeal was taken by the plaintiff.

(3)

Since thus the market price of the bonds was not depreciated, there is no substance to the charge that their price was deliberately depressed in order to make possible their purchase at depressed prices for use in paying taxes.

As bearing on the charge that the consent to the use of bonds in payment of taxes was a part of a plan to "forestall the collection of defaulted municipal bonds", we call attention to the fact that the Commission voluntarily discontinued consenting to bond settlements in all municipalities (R. 172).

In passing, we wish to correct plaintiff's statement on page 53 of appellee's brief that these consents were not actually discontinued in view of the fact that subsequent minutes of the Commission showed two approvals. This overlooks the facts that the resolution expressly saved pending cases (R. 60), that one of the two approvals referred to shows on its face that the case was pending on October 11, 1935, at the time of the passage of the resolution (R. 218), and that at the time of the hearing below all pending cases had been closed (R. 117).

Counsel for the plaintiff are in error in saying on page 54 of appellee's brief that the municipality has compromised taxes at amounts less than face value and then accepted at face value in payment of the compromised taxes bonds of the borough. The cases of bond settlements are all set out in the record, and in not one of them was the face value of the taxes reduced. The taxes and interest were paid in full by accepting bonds and coupons at face of principal and requiring cash for any odd amounts due above the round figures of the face of the bonds.

Nor was the charge proved insofar as plaintiff stated that acceptance of bonds in payment of taxes prevented the accumulation of additional tax money. On the contrary, the evidence tended to prove that the only cases where bonds were accepted in payment of taxes were those where the accumulated taxes exceeded the value of the property and that the property was unsalable at any price (Appellants' Br. pp. 51-52). Moreover, the rule that current taxes be paid in cash and the elimination of the arrearages which had robbed the owners of any incentive to pay current taxes, meant actual cash which would not otherwise have been paid.

Counsel make the point at pages 57-58 of appellee's brief that many of those who took advantage of the opportunity to make bond settlements must have been capable of paying the taxes on the properties in cash in full. The question is not whether they were capable of paying cash but whether, as a matter of good business, they would have paid cash. There is no personal obligation upon the owner of New Jersey real property to pay the taxes. If the taxes exceed the value of the property, as they did in these cases, the worst that can happen to the owner is to lose the record title to his worthless interest in the property.

(4)

Again, since bond prices were not depressed, even if there was a conspiracy "to forestall the collection of defaulted municipal bonds", the municipality was not enabled to purchase bonds at depressed prices.

More important, however, is the unfounded character of the charge that bonds were purchased with funds which should have been applied in pro rata payments on all the defaulted bonds of the borough. The fact is that the bonds purchased were assessment bonds paid for with trust assessment funds which could be used for no other purpose than to retire assessment bonds. The entire issue of assessment bonds was held by one bondholder so that no question of preference was involved (R. 170-171).

This disposes of all except the first of the claims urged in the appellee's brief, which will be discussed under the following heading:

Does the Act forestall creditors as a whole or merely forestall a race of diligence? Is the plaintiff upholding the cause of the creditors as a whole or merely seeking a preference for itself?

a. The litigation in which the Commission has taken part.

As proof of "the manner in which numerous delays and difficulties have been interposed in suits by creditors" by the Commission, the appellee's brief at page 10 refers the

court to the affidavit verifying the bill of complaint in support of the application for the interlocutory injunction (beginning R. 37). The parties stipulated below that this affidavit should be used only upon the application for the preliminary injunction (Stipulation, par. 22, R. 119), and that application has not been brought to this Court by appeal. Thus, material to combat it was not included in the record in this court. Nevertheless, we submit that this Court by an examination of the printed reports of the opinions rendered in the cases and an examination of the records in such of them as are included in the Record in this case, can reach an accurate determination as to whether it was the Commission or the group of plaintiffs, that was on the side of the creditors as a whole. The cases are (R. 37-41):

Township of North Bergen
Action at law.
Equity suit: *Barker* v. *North Bergen* (R. 155-161).

City of Asbury Park
Action at law.
Equity suit to restrain acceptance of bonds.
Mandamus proceeding: *Asbury Park* v. *United States ex rel. Albert G. Christmas, Nolan Harrigan, and Edwin H. Barker*, 78 F. 2d 1003; cert. den. 296 U. S. 624.

Township of Delaware
Action at law: *Delaware Township* v. *Central-Penn National Bank of Philadelphia*, 79 F. 2d 255.

Township of Chester
Action at law.
Mandamus proceeding: *United States ex rel. Norfolk & Western Railway Co.* v. *Township of Chester* (R. 187, 191).

Borough of Fort Lee
Action at law: *Barker* v. *Fort Lee.*
Equity suit to restrain acceptance of bonds.

While an examination of the reports and the Record here will indicate that in many of these cases counsel for the Commission appeared on behalf of the municipality (and, indeed, that the Commission was permitted to intervene in the *Runnemede, Chester* and *Asbury Park* mandamus proceedings by Judges Avis and Forman, two of the three who decided the application below), the only case in which counsel for the Commission raised the Act Concerning Municipal Finances against the obtaining of a judgment in the federal court was the *Township of Delaware* case, which was decided before the Circuit Court of Appeals in *Asbury Park* v. *Christmas* had applied the federal court's rule of discretion in these cases.

It is true that the Commission has hesitated to order distributions of cash by the municipalities which it supervises in the absence of either an agreement between all the bondholders which would fix their rights *inter sese* or a court decree which would have the same effect. This was explained by the statement of the Chairman of the Commission in the testimony in *Barker* v. *North Bergen* (R. 200), that the funds on hand came from several different sources. The Act Concerning Municipal Finances sets up a special proceeding for the determination of the rights of the creditors *inter sese* in a fund (Sec. 354, Appendix 109-110). In refutation of the claim on page 11 of appellee's brief that the municipalities under the supervision of the Commission have not made payments to creditors, we cite the testimony (R. 189) that in one municipality, the Township of North Bergen, over $3,000,000. was paid to creditors. The record of course does not show what has been accomplished since the suit was submitted below in October, 1936 in these six municipalities where the Commission is alleged by its activities in defending litigation to have "forestalled the collection of defaulted municipal bonds."

As an example of the affirmative use of the Act by the Commission for the benefit of the creditors as a whole, we cite *Rippel* v. *Asbury Park*, 118 N. J. Law 45, 190 Atl.

489, referred to at length beginning at page 24 of our principal brief.

Counsel for the plaintiff in their brief ignore *Pittsburg Steel Company* v. *Baltimore Equitable Society*, 226 U. S. 455, abstracted on page 41 of our principal brief, which holds that an omnibus remedy may constitutionally be substituted for an individual remedy.

Counsel for the plaintiff in their brief also ignore *Wright* v. *Vinton Branch*, 300 U. S. 440 (1937) and the provision contained in Section 355 of the Act (Appendix to our principal brief, p. 110), giving the New Jersey Supreme Court power to relax any of the statutory stays. We cannot assume that any suitor with an absolute right to the satisfaction of his claim would be refused a relaxation of the stay. We must assume that the New Jersey Supreme Court would refuse to relax the stay only under the same circumstances as the Circuit Court of Appeals in *Christmas* v. *Asbury Park* refused to lend the aid of the writ of mandamus to the plaintiffs.

b. The rule of Christmas v. Asbury Park.

The plaintiff here, however, attacks the decision in the *Asbury Park* case (Appellee's Br. p. 20). Counsel say that it is difficult to understand why the case was decided as it was because it was contrary to the rule of the cases cited by them and contrary to the decisions of other Circuit Courts of Appeal. They say that since we have gone beyond the printed transcript of the record in discussing the case, it is necessary for them to do likewise. We see no reason why counsel for the plaintiff need apologize for going to the record of that case to explain the opinion, nor do we feel guilty of any impropriety in having done so ourselves.

Replying first to the claim that the *Asbury Park* case is contrary to the rule of the cases cited by counsel, we find that not one of them stands for the proposition that the holder of a judgment on municipal bonds has an absolute right to a writ of mandamus.

The plaintiff, to establish its point, is forced to distinguish between the undoubted discretion of the federal court as to how many years the levy will be spread over when required by mandamus and the discretion as to whether at a given time any levy at all will be required by mandamus (See our principal brief, pp. 14, 37).

The plaintiff must concede the power of the court to direct by mandamus that a nominal amount only be inserted in the levy for one or more years and the balance in more substantial payments over succeeding years. This differs by only a hair's breadth from what was done in *Christmas* v. *Asbury Park*. Plaintiff also must concede that the usual mandamus proceeding is one addressed to the discretion of the court. (*U. S.* v. *Dern*, 289 U. S. 352, 359 (1933) and cases cited.) But here plaintiff takes another distinction and says that there is an exception in the case of a mandamus to compel the levy of a tax to pay a judgment on municipal bonds. When it is pointed out that even in such a mandamus there is the discretion as to the amount to be inserted in the tax levy, we are told that this discretion constitutes an exception to the exception.

We submit that the distinction between the discretion to spread the levy over various years and the discretion to postpone the levy for a year is a distinction without a difference and that it does not constitute the basis for an arguable question.

The inestimable value of the federal courts' discretionary power in mandamus as enunciated in *Asbury Park* v. *Christmas* is well illustrated in the subsequent history of that litigation given in *Rippel* v. *Asbury Park*, 118 N. J. Law 45, 190 Atl. 489 (*supra*), and abstracted on pages 24-27 of our principal brief. Where skillful judges have made use of this principle of judicial discretion in cooperation with state authorities or responsible creditors' committees, insurgent creditors have been given no more and no less than that to which they would have been entitled under fair plans approved by the court. Groups of creditors have been prevented from obtaining preferences over their

fellow creditors and their fellows have thus not been forced, from motives of self-preservation and irrespective of their natural inclinations, into the position of bringing proceedings for their individual benefit. We regret that the Circuit Court of Appeals for the Fifth Circuit in *United States ex rel. Metzger* v. *Vero Beach*, 90 F. 2d 70 (C. C. A. 5, 1937), cited on page 23 of appellee's brief, felt obliged to take the view that the discretion in mandamus was limited to spreading over a number of years a levy which would ultimately pay the creditors' judgment.

The case leaves the way open in that circuit for a determination that nothing should be paid on the judgment for, say, five years, but the determination must provide a schedule of payments which at some time in the future will exhaust the judgment. The rule of that case would deprive the court of the opportunity to feel its way from year to year and to base the amount of the assessment for each year on the immediate experience and prospects of the municipality. Instead it would require the court to act as a soothsayer and to prophesy once and for all the conditions which would obtain in each of the whole series of years until the execution had been completely satisfied.

The *Vero Beach* case was a substantial retrograde step in the progress of the forces of municipal righteousness against a creditor who seeks to capitalize his nuisance value.

We think that this Court can do a great service to the cause of orderly municipal refunding by expressly disapproving the *Vero Beach* case. That service would usefully supplement the service performed by the Circuit Court of Appeals for the Third Circuit in deciding *City of Asbury Park* v. *Christmas*, *supra*, 78 F. 2d 1003 (*cert.* den. 296 U. S. 624).

c. Does the plaintiff seek a preference or the same thing by another name?

Plaintiff labors through the New Jersey decisions and the decisions of the federal courts and of other states to show that there is a rule "first come, first served". On page 48 counsel say:

> "this creditor is not seeking a preference over other creditors, but is seeking a remedy open to all other creditors, namely, a special tax for the payment of Appellee's judgment which will secure to it only its *pro rata* share of the tax collections . . ."

Evidently counsel for the plaintiff use the word "preference" in a different sense from that in which we understand it. We had supposed that a creditor of an insolvent municipality who sought an order of the court under which his judgment would be paid where other creditors not diligent enough to have obtained a similar order of the court would go hungry, had obtained a preference.

Whatever that process may be called—"seeking a preference", "a race of diligence" or "seeking a remedy open to all other creditors, namely, a special tax for the payment of Appellee's judgment which will secure to it only its pro rata share of the tax collections"—that is the evil at which the stay and omnibus mandamus provisions of the Act Concerning Municipal Finances are aimed. It is to that too that the plaintiff claims a constitutional right.

Plaintiff's counsel cite on page 40 of appellee's brief *State ex rel. Buckwalter et al.* v. *City of Lakeland*, 112 Fla. 200, 150 So. 508 (1933). Since that case was decided, the dissenting opinion has become the law, for the Supreme Court of Florida now exercises a discretionary jurisdiction to stay peremptory writs of mandamus ordered on behalf of municipal judgment creditors. (*City of Sarasota* v. *State ex rel. Evans*, 127 Fla. 126, 172 So. 728 (1937).

The attack on *Vanderpoel* v. *Borough of Mt. Ephraim*, 111 N. J. Law 423, 168 Atl. 575, abstracted in our principal

brief at p. 37, is nothing but a play on words. We cited it for the modern doctrine that municipal creditors rank *pari passu* in the case of insolvency. Counsel for the plaintiff on page 50 of appellee's brief cite against it *Phelps* v. *Borough of Fort Lee*, 14 N. J. Misc. 895, 188 Atl. 689 (Supr. 1936), aff'd. *per curiam* 118 N. J. Law 181, 191 Atl. 836 (E. & A. 1937), where it was held that a creditor holding *tax anticipation notes* of a municipality under the supervision of the Municipal Finance Commission was entitled to a preference. We never meant to claim that in a case of municipal insolvency all class distinctions were abolished. All that we meant was that each member of each class of creditors ranked *pari passu* with the other members of that class. Incidentally, counsel criticize the holding in *Christmas* v. *Asbury Park*, saying (Appellee's Br. p. 22):

> "The language of the opinion was vague and inept. For instance, the Court could not have meant 'equal treatment' literally, for the rights of the various classes of municipal bondholders are not the same."

It may be that we were wrong in speaking of the *modern* doctrine that municipal creditors rank *pari passu* in the case of insolvency since it was enunciated as long ago as 1885 by Mr. Justice Field in *New Orleans Board of Liquidation* v. *Hart*, 118 U. S. 136 (1885). That was a case where a judgment creditor brought mandamus to compel the issuance to him of bonds provided for under a settlement agreement. The writ was opposed by the holders of bonds issued under a prior statute on the ground that the issuance of bonds to the relator would give the relator an interest in municipal property and revenues which had been pledged to secure their bonds under the prior statute. The United States Supreme Court referred to the fact that the relator's debt was in existence at the time when the municipal revenues and property were pledged for the payment of the objector's bonds, and held that under the law of Louisiana the relator was entitled to share ratably in the municipal property so

that the earlier statutes were void as to him. Mr. Justice Field's language on the subject was as follows (p. 147):

> "The objectionable feature in all the previous acts is their attempt to do partial justice, by discriminating between creditors equally meritorious, and applying the property and funds of the city to the payment of some of them in preference to others. In our opinion this cannot be done. All creditors at the time the property and funds were appropriated were entitled, for the payment of their respective claims, when legally established, to share *ratably* in the proceeds of the property and funds."

By saying that the doctrine of equal rank in case of insolvency was modern, we referred to the gradual clarification which has taken place in the distinction between those cases where a municipal creditor is entitled to full satisfaction irrespective of the claims of fellow creditors and those cases where all must share pro rata. Counsel for the plaintiff on page 51 of their brief classify the cases where the rule of "every man for himself" prevails as cases of an open fund, and the cases where creditors share pro rata as cases of a closed fund. The terminology adopted by the decisions classifies the cases upon the existence or nonexistence of an inexhaustible taxing power.

It was said that where general obligations of a solvent municipality were backed by an inexhaustible taxing power, no harm could come from permitting the diligent creditor to satisfy his claim in full, while his less zealous fellows reaped delay as the fruit of their inaction. On the other hand, where all must be satisfied from a single and limited source, they must be satisfied ratably. Examples of these two classes are to be found in the cases cited by plaintiff: *State ex rel. Gillespie* v. *Carlton*, 103 Fla. 810, 138 So. 612 (1931), and *Moran* v. *State ex rel. Montgomery*, 111 Fla. 429, 149 So. 477 (1933).

By hypothesis the general taxing power ceases to be inexhaustible when a municipality is insolvent, and wherever that situation has arisen the courts have applied the

pari passu rule. (*Morris, Mather & Co.* v. *Port of Astoria*, 141 Ore. 251 at 262 *et seq.*, 15 P. 2d 385 at 388 *et seq.* (1932), and discussion and cases cited; *Town of Columbus* v. *Barringer*, 85 F. 2d 908, at 911-12 (C. C. A. 4, 1936); *cf.* 13 N. Y. U. Law Q. Rev. 454 at 462-63, notes 79-81).

d. The Act did not affect existing priorities.

Plaintiff says in substance (Appellee's Br. p. 48) that it is not fighting a selfish battle but a battle for all the creditors in that it seeks to overturn the provisions of the Act Concerning Municipal Finances insofar as it has the effect of subjecting the claims of creditors to the prior lien of state, county and school taxes and municipal operating expenses. Counsel may be spared that trouble for the act has no such effect. That doctrine of the law of the State of New Jersey was in existence many years before the Act Concerning Municipal Finances was passed and before the plaintiff bought its bonds in 1930. On page 34 of appellee's brief, counsel by the sheer force of their italic type attempt to persuade this Court that it was because the Municipal Finance Commission was functioning in the Borough of Fort Lee that the New Jersey Supreme Court in *State ex rel. Phelps* v. *Borough of Fort Lee*, (quoted at Appendix E, p. 84 of Appellee's Brief) held that creditors holding a writ of mandamus came after state, county and school taxes and operating expenses.

We marvel at the ingenuity of the misinterpretation. The Act Concerning Municipal Finances contains not a word which would indicate the slightest intention to change the substantive rights of municipal creditors. Section 352 (at pages 107-109 of the Appendix to our principal brief) stays all mandamus proceedings except that it authorizes mandamus proceedings brought for the benefit of all creditors. The Act does not purport to create any new cause of action. If the creditors in individual actions before were not entitled to relief, then the statute does not entitle them to it when they sue in an omnibus action. There is one im-

portant exception to this in that the statute does away with the necessity for a judgment, and the Supreme Court is authorized "to afford to the holders collectively of any due and unpaid claims against a municipality any remedy which might be afforded under any other law to any individual creditor * * * as if there had been an entry of judgment in their favor * * * and all other conditions precedent to the affording of such relief by mandamus under such other law * * *."

Mandamus lies only to compel an existing legal duty (*Brownsville* v. *Loague*, 129 U. S. 493 (1889)). In *State ex rel. Phelps* v. *Fort Lee*, if it had not been the duty of the defendants under the provisions of the Execution Act and the Tax Law, or either of them, to assess and levy taxes for a single judgment creditor, they could not have been compelled to levy taxes for all the contract creditors. The only new right given by the Act was the right to a mandamus without a judgment. The thing required to be done by the mandamus was precisely the same as that which would have been required under the old law if a judgment had been obtained.

e. The judgment-creditor never had any priority.

The court in *State ex rel. Phelps* v. *Fort Lee* was merely applying, as though a judgment had been obtained, the old law as to the priority between the claims of private creditors, on the one hand, and state, county and school taxes and operating expenses, on the other. The subordinate position of the claims of private creditors is established in the following cases:

Gabler v. *Elizabeth*, 42 N. J. Law 79 (Supr. 1880);
State ex rel. Water Commissioners v. *Brewster*, 42 N. J. Law 125 (Supr. 1880);
Booth v. *Parnell*, 12 N. J. Misc. 413, 172 Atl. 50 (Supr. 1934);
Bayonne v. *State (Kingsland, Pros.)*, 41 N. J. Law 368 (E. & A. 1879);

Ross v. *Walton*, 63 N. J. Law 435, 44 Atl. 430 (Supr. 1889), aff'd. 67 N. J. Law 688, 52 Atl. 1132 (E. & A. 1902);

State ex rel. Coe v. *Englewood*, 68 N. J. Law 559, 53 Atl. 562 (Supr. 1902);

Tipping v. *Dougherty*, 11 N. J. Misc. 931, 169 Atl. 671 (Supr. 1933);

Piscataway Township v. *First National Bank of Dunellen*, 111 N. J. Law 412, 168 Atl. 757 (E. & A. 1933).

There is nothing extraordinary about a rule which subordinates debt service to operating expenses and to taxes payable to other governmental units. Subordination of debt service to operating expenses is the law of this Court. (*Clay County* v. *McAleer*, 115 U. S. 616 (1885)). The question of priority as between different taxing bodies arises in every case where different bodies' taxes are assessable on the same property. If the municipality collects all the taxes and pays them over to the school district, county and state, the rule might conceivably be that the municipality's debt service would come first and anything left over would go to the other governmental bodies. In that case the municipal bonds would be the prime investment and those of the other governmental bodies the less desirable investments. The rule adopted in New Jersey which makes the municipal debt service come last among the governmental bodies makes the municipal bonds the less desirable of the three. There is nothing inherently better in the one policy than in the other unless it can be said that the New Jersey policy is the wiser in that it avoids the natural propensity of a municipality, which has collected all that it needs, to show up on collecting the rest for other governmental bodies. By placing the municipality last on the list, the efforts of tax collection tend to be more aggressive.

In spite of *State ex rel. Phelps* v. *Fort Lee* it is the theory of the plaintiff that a sharp reversal of this public policy takes place where the debt service creditor has obtained a judgment. No attempt is made to assign any reason for

the alleged reversal of policy in such a case. We are simply told that the legislature has spoken and that the legislative fiat must prevail whether it makes for sense or nonsense, order or chaos. There is no reported decision in New Jersey which holds that a municipal judgment creditor is entitled to a special tax which gives him a position ahead of state, county and school taxes and operating expenses, and we know of no case of the levy of such a special tax.

So far as we know, the sole basis for the plaintiff's claim that it is entitled to an aliquot part of each dollar of taxes collected instead of sharing ratably with the other debt service creditors after prior charges is a claim that the statute by referring to payments to the officer serving the process by the "collector" means that the collections do not go into the general funds of the municipality before payment to the officer serving the process, and that they are therefore not subject to the usual prior charges (Appellee's brief, p. 35). This argument is answered by the very case which counsel cites in support of it, *Gabler* v. *Elizabeth*, 42 N. J. Law 79, 80 (*supra*), where the term "collector" as used in the old chapter on Executions of the Revised Statutes of 1877 was construed, on concession of counsel, to mean the officer "having the legal custody of and power to disburse the funds" of the corporation.

The Act of 1878 (Section 34 of the Execution Act, 2 Comp. Stats. 2255, quoted on p. 85 of Appendix B of our principal brief) refers back to the procedure under this old statute of 1877 and again uses the word "collector". Plaintiff's counsel assert that the Tax Act of 1918, on which they rely (Laws of 1918, Ch. 236, Sec. 505, Appendix B of our principal brief, pp. 87-88), is to be read with the Act of 1878, so that there too the word "collector" must be read as it was in the Act of 1877 to mean the officer "having the legal custody of and power to disburse the funds" of the municipality.

There is thus nothing in the language of the Execution and Tax Acts to indicate that a creditor who has gone through the procedure there outlined ranks ahead of state, county and school taxes and municipal operating expenses.

Indeed, the statute itself conclusively forbids the plaintiff's construction. The Tax Act of 1918 in Section 505, on which the plaintiff relies, provides that when the officer holding an execution has not been able to collect, he shall serve it upon the *county board of taxation*, and that the county board shall add the amount of the execution to the amounts which the taxing district certifies to it to be raised by taxation, and the amount of said execution shall thereupon also be raised by taxation and paid by the collector on or before the fifth day of June following, provided that if the execution gets to the county board too late to be included in its calculation of the tax rate for any given year, it shall be included in calculating the tax rate for the next year, "*unless the amount of such execution and interest shall have been included in the taxing ordinance or resolution with the other amounts to be raised by taxation in said taxing district*, or unless the execution shall have been satisfied otherwise." (Italics ours.)

The provisions of the 1918 statute which we have italicized in the above quotation show that the tax therein authorized is interchangeable with the ordinary items of the municipality's budget. If the county board receives the execution after it has fixed the rate for the year, then the amount is to be included by the board in the amount to be raised the next year "unless the amount of such execution and interest shall have been included *in the taxing ordinance or resolution with the other amounts* to be raised by taxation in said taxing district." (Italics ours.)

Thus, if, as claimed by counsel for the plaintiff, a judgment creditor had a right to a payment direct from the collector, he might lose it in a case where the execution was served on the county board after the tax rate was struck and the municipality then included it in the taxing ordinance for the next year. A construction of a statute which would make such important rights hang upon such an empty chance must be avoided. It is avoided when we realize that, as above demonstrated, the word "collector"

is not used in its technical sense and that whether moneys are collected as a result of an assessment required by the taxing ordinance or an assessment required by the county board of taxation, they go into a general fund and are subject to all prior public claims.

The most that the New Jersey statutes give the judgment creditor is the assurance of a place in the tax ordinance. Once he is in the tax ordinance, he takes his rank with other claims of the same character. If his judgment is for debt service, it ranks behind the claims for state, county and school taxes and behind the necessary expenditures of the municipality for its current operations.

This place in the tax ordinance is a very valuable privilege. It was to such a place in the tax ordinance that the New Jersey Supreme Court was referring to in *Gabler* v. *Elizabeth* (42 N. J. Law 79, *supra*), when it said as quoted on the appellee's brief at page 17 that the Act of 1878 "imparted life to what was before, without judicial aid first had to provide a fund with which to pay, little better than the mere shadow of a remedy." The opinion may be combed from title to conclusion without finding an indication that the court held that "the money received as a result of such tax never gets into the borough treasury and never becomes subject to any claims on the general tax revenues by the State, the County or the municipality," as intimated by plaintiff's counsel at page 35 of their brief.

In the *Gabler* case, a judgment creditor acted under the old chapter on Executions of the Revised Statutes of 1877, Section 9 of which provided (42 N. J. Law 79-80) for service of the execution upon the collector "who is hereby required to pay and satisfy the same out of the first moneys * * * which shall come into his hands." The judgment creditor followed this out but was met with the defense that Section 34 of the Execution Act of 1878 (which applies to municipalities instead of school districts but corresponds to Section 35 on which the plaintiff relies, see Appendix to our principal brief, p. 85), had repealed the old act and that

he ought to have served his execution on the assessors instead of on the "collector". He replied that the new act could not constitutionally have that effect because under the provisions of the old act he was entitled to the first moneys which should come into the hands of the collector and thus would come in ahead of state and county taxes, which were owing in large amount. The court replied that he had no such priority under the old act, and that, indeed, the new act increased his rights because under the old act no fund was appropriated for his payment, and under the city charter the treasurer was not permitted to make any payments except under appropriations, while the new act required the appropriation of a fund and thus authorized payment by the treasurer.

The court's words were (p. 86):

> "I have referred to these provisions of general law and of the city charter to show that the plaintiff was not invested with a remedy as broad and sweeping as he lays claim to; that he not only is not entitled to be paid out of the first moneys of the city that may come to the treasurer's hands from whatever source, but is entitled to demand payment of the treasurer only from some fund previously appropriated to pay his claim, or devoted to the payment of a class of claims to which his properly belongs, or from moneys unappropriated. The only fund of this kind which can be claimed as applicable to the payment of his execution is the contingent fund; but the evidence fails to show that the treasurer has in hand or is likely to receive any money belonging to this appropriation.
>
> "If my conclusions be correct, and this is the extent of his right against the respondent, it will be readily conceded, in view of the legislation referred to, that the act of 1878 took nothing of substantial value from him in impairment of his remedy, but, by its additional provisions, imparted substance and life to what was before, without judicial aid first had to provide a fund with which to pay, little better than the mere shadow of a remedy. It leaves him without ground to complain of the repeal of the earlier law."

If the court had believed that the new statute had not only created a new right to an appropriation for the plaintiff but had also given him a preference over state and county taxes which he had claimed under the old statute but which the court had held to be non-existent, the court certainly would have said so.

ANSWER TO APPELLEE'S POINT II:

"The District Court did not err in its rulings as to the statutes governing the enforcement of appellee's judgment."

Plaintiff's counsel here concede that the court below erred in omitting the Tax Act from the enumeration of acts governing the rights of the appellee, but say that the decree need not be reversed because the error is one of form and not of substance. The State of New Jersey does not feel at liberty to disregard a provision in a decree of a court of the United States on the ground that it is merely a matter of form. The Tax Law either is the source of none of the plaintiff's rights or it is the source of some of the plaintiff's rights or it is the source of all of the plaintiff's rights. The decree below says that it is the source of none of the plaintiff's rights. The plaintiff says that it is the source of some of the plaintiff's rights. We say that it is the source of all of the plaintiff's rights. In support of our position, we call attention to the fact that under the School Law, Section 237, (pp. 86-87 of our principal brief) the execution is to be served upon the assessors and the assessors are required to make the assessment. Under Section 505 of the Tax Law of 1918 (pp. 87-89), the execution is to be served upon the county board of taxation and the county board of taxation is required to make the assessment. Counsel for the plaintiff say that the provisions can stand together because the proviso in the Tax Law on page 88 says that the county board need not make the assessment if the assessors have already made it. The proviso so prescribes on only one contingency, i. e., if the execution shall not have been served on the county board before that board

shall have fixed the rate for the year. If, on the other hand, the execution is served on the county board before that board has fixed the rate for the year, then the county board has no choice but to include the amount of the execution in the amount to be raised by taxation even though the assessors have already included it in response to an execution served on them. This precludes the possibility that the old statute which required that the execution be served upon the assessors is still in existence. Otherwise, we would have a mandatory requirement for two assessments in the same amount, one made by the assessors and the other by the county board.

On the plaintiff's concession, the decree must be modified to include a recital of the Tax Law of 1918 (Laws of 1918, Ch. 236, Sec. 505) as one of the statutes fixing its rights, and should further be modified by eliminating Section 35 of the Execution Act and Section 237 of the School Law from that class and declaring that they were repealed by the Tax Law of 1918.

ANSWER TO APPELLEE'S POINT IV:

"The three-judge court had jurisdiction of the cause."

We regret that we did not make clear to counsel for the plaintiff our position on this branch of the case. We agree with them that jurisdiction of a three-judge court depends upon the case made out on the face of the papers. Our contention is that it appeared on the face of the complaint when read in the light of the applicable law of the State of New Jersey that no injunction could properly issue against state officers in the enforcement or execution of a state statute except in the case of the provision permitting consent by the Commission to bond settlements, and that in that case it appeared on the face of the complaint that the members of the Commission were colorably joined for the purpose of ousting the one-judge district court of jurisdiction. The actual proceedings thereafter were cited by us merely as illustrative of the impossibility which existed *ab initio* of making out a case for a three-judge court.

If this Court determines to remand the cause, we do not lieve that the course suggested by the plaintiff of a mand without a reversal is a proper one. *Healy* v. *Ratta*, 9 U. S. 701 (1933), which counsel cite on page 77 of pellee's brief, was decided before the practice suggested us had been developed in *Gully* v. *Interstate Natural Gas* ., 292 U. S. 16 (1934). While we have assigned error the appeal to the Circuit Court of Appeals to the effect at the three-judge court erred in not remitting the case a one-judge court so that the Circuit Court of Appeals uld be bound to reverse in any case where this Court had manded, we feel that the prosecution of the appeal in the rcuit Court of Appeals would involve needless delay and pense.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1938.

No. 448.

DAVID T. WILENTZ, J. H. THAYER MARTIN and WALTER R. DARBY, Etc., *et al.*,

Appellants,

vs.

SOVEREIGN CAMP, WOODMEN OF THE WORLD,

Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

BRIEF OF APPELLEE.

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INDEX.

	PAGE
Reference to official report of opinion below	1
Statement of the grounds on which jurisdiction of this Court is invoked	1
Statement of the case	2
Complaint	3
Decree	6
Facts	8
ARGUMENT	15
Summary	15
POINT I. The District Court did not err in enjoining the Municipal Finance Commission from functioning in the Borough and School District insofar as such functioning affects the Appellee in the enforcement of its judgment, or in declaring the stay provisions of the Municipal Finance Commission Act unconstitutional	15
(a) The Municipal Finance Commission Act infringes upon and impairs the jurisdiction of the Federal courts	28
(b) The contract between the School District and Appellee as a bondholder is impaired by the stay provisions of the Municipal Finance Commission Act, contrary to the contract clause of the Constitution of the United States	29
(c) Bondholders have not been given an adequate and efficacious remedy in substitution for that withdrawn	32
(d) The Municipal Finance Commission Act cannot be sustained as emergency legislation	40

PAGE

(e) The Municipal Finance Commission Act cannot be sustained as an Insolvency Act.... 47

POINT II. The District Court did not err in its rulings as to the statutes governing the enforcement of Appellee's judgment 52

POINT III. The District Court did not err in enjoining the acceptance of bonds in payment of taxes and in its ruling as to the rights of Appellee in that respect 53

POINT IV. The three-judge court had jurisdiction of the cause 60

(a) As to the question of jurisdiction with respect to the stay provisions of the statute.... 61

(b) As to the question of jurisdiction with respect to the provisions concerning the acceptance of bonds in payment of taxes..... 70

CONCLUSION 74

APPENDIX A 75

Stay Provisions of the Municipal Finance Commission Act 75

Laws of 1935, Chapter 258..... 78

APPENDIX B 81

Section 35 of the Execution Act..... 81

APPENDIX C 82

Section 237 of the School Law..... 82

APPENDIX D 83

Section 505 of the Tax Act..... 83

APPENDIX E 84

Opinion of New Jersey Supreme Court in *State ex rel. Phelps, et als.* v. *Borough of Fort Lee, et als.* 84

Table of Cases Cited.

	PAGE
Ashton et al. v. *Cameron County Water Improvement District, etc.*, 298 U. S. 513 (1936), *rehearing denied* 299 U. S. 619 (1936)	47
Barker v. *Township of North Bergen*,	11
Booth v. *Parnell*, 12 N. J. Misc. Rep. 413	85
California Water Service Co. v. *Redding*, 304 U. S. (Adv. Op.) 252, 254 (1938)	62
City of Asbury Park v. *Christmas*, 78 F. 2d 1003 (1935)	20, 21, 22, 25
City of Enterprise v. *Rawls*, 204 Ala. 528 (1920)	54
Crummer v. *City of Fort Pierce*, 2 F. Supp. 737 (S. D. Fla. 1932)	55, 56, 57
Davis v. *Wallace*, 257 U. S. 478 (1922)	65, 70
Delaware Township v. *Central-Penn National Bank*, 79 F. 2d 255 (C. C. A. 3rd, 1935)	28
Edwards v. *Kearzey*, 96 U. S. 595 (1877)	32
Eggleston v. *Plowman*, 49 S. D. 609 (1926)	54
Ex parte Buder, 271 U. S. 461 (1926)	61
Ex parte Poresky, 290 U. S. 30 (1933)	61, 62
Gabler v. *Elizabeth*, 42 N. J. L. 79 (Sup. Ct. 1880)	17, 35
Galena v. *Amy*, 72 U. S. 705 (1866)	40
Glenn v. *Field Packing Co.*, 290 U. S. 177 (1933)	65, 66
Goelet v. *Elizabeth*, Fed. Case No. 5502 (D. C. N. J. 1879)	18
Gilly v. *Interstate Natural Gas Co.*, 292 U. S. 16 (1934)	63, 73
Harris v. *City of Miami*, 6 F. Supp. 305 (S. D. Fla. 1932)	57

PAGE

Healy v. *Ratta*, 289 U. S. 701 (1933), 67 F. 2d 554, 556 (C. C. A. 1st, 1933) 74
Home Building and Loan Association v. *Blaisdell*, 290 U. S. 398 (1934) 32, 41
Hourigan v. *Township of North Bergen*, 113 N. J. L. 143 (E. & A. 1934) 18, 33, 40, 45, 49
Hubert v. *Mayor, etc.*, 215 U. S. 170 (1909) 31

Keefe v. *City of St. Petersburg*, 5 F. Supp. 132 (S. D. Fla. 1933) 57
Kendall v. *Stokes*, 44 U. S. (3 How.) 87 (1845) (companion case to *Kendall* v. *U. S.*, *supra*) 19
Kendall v. *U. S.*, 37 U. S. (12 Pet.) 524 (1838) 19
Kentucky v. *Dennison*, 65 U. S. (24 How.) 66 (1860) 19
Knox County v. *Aspinwall*, 65 U. S. (24 How.) 376 (1860) 19

Lee v. *Bickell*, 292 U. S. 415 (1934) 65, 66
Louisiana v. *Pilsbury*, 105 U. S. 278 (1881) 31
Louisville & N. R. R. Co. v. *Garrett*, 231 U. S. 298 (1913) 61, 65, 70
Louisville Joint Stock Land Bank v. *Radford*, 295 U. S. 555 (1935) 44
Lyon v. *City of Elizabeth*, 43 N. J. L. 158 (Sup. Ct. 1881) 17

McNee v. *Wall*, 4 F. Supp. 496 (S. D. Fla. 1933) *on retrial*, 13 F. Supp. 326 (S. D. Fla. 1935) 56, 57
Moran v. *City of Elizabeth*, 9 Fed. 72 (C. C. D. N. J. 1881) 18
Moran v. *State*, 111 Fla. 429 (1933) 51
Munday v. *Rahway*, 43 N. J. L. 338 (Supt. Ct. 1881), *affirmed* 44 N. J. L. 395 (E. & A. 1882) 18, 35

Nelson v. *St. Martin's Parish*, 111 U. S. 716 (1883) 19
N. & W. Ry. Company v. *Boyle, Treasurer*, 12 F. Supp. 522 (N. D. Ohio, 1935) 57

PAGE

Norfolk and Western Railway Co. v. *Board of Public Works of West Virginia*, 3 F. Supp. 791 (S. D. W. Va., 1933) 71, 73

Oklahoma Gas & Electric Co. v. *Oklahoma Packing Co.*, 292 U. S. 386 (1934) 67

Phelps v. *Borough of Fort Lee*, 14 N. J. Misc. 895 (Sup. Ct. 1936), *affirmed per curiam*, 118 N. J. L. 181 (E. & A. 1937) 50

Piscataway Township v. *First National Bank of Dunellen*, 111 N. J. L. 412 85

Pleasant v. *Missouri-Kansas-Texas R. Co.*, 66 F. 2d 842 (C. C. A. 10th, 1933), *certiorari denied* 291 U. S. 659 (1934) 72, 73

President ex rel. Moran v. *City of Elizabeth*, 40 Fed. 799 (C. C. D. N. J. 1889) 18

Railroad Commission of Calif. v. *Pacific Gas & Electric Co.*, 302 U. S. 388 (1938) 65, 70

State ex rel. Buckwalter et al. v. *City of Lakeland*, 112 Fla. 200 (1933) 40

State ex rel. Phelps et al. v. *The Borough of Fort Lee* (1938), Appendix E, p. 84 32

State v. *Carlton*, 103 Fla. 816 (1931) 51

Sterling v. *Constantin*, 287 U. S. 378 (1932) 65

Township of Bernards v. *Allen*, 61 N. J. L. 228 (E. & A. 1898) 50

United States v. *Bekins*, 304 U. S. (Adv. Op.) 27 (1938) 48

U. S. v. *City of Elizabeth*, 24 Fed. 851 (C. C. D. N. J. 1885) 18

U. S. ex rel. Christmas v. *City of Asbury Park*, U. S. D. C. N. J. Cause No. L-4851 20

PAGE

U. S. ex rel. Metzger v. *City of Vero Beach*, 90 F. 2d 70 (1937) 23
U. S. v. *New Orleans*, 98 U. S. 381 (1878) 19

Van Cleve v. *Passaic Valley Sewerage Commissioners*, 71 N. J. L. 574 (E. & A. 1905) 50
Vanderpoel v. *Borough of Mt. Ephraim*, 111 N. J. L. 423 (1933) 50
Von Hoffman v. *City of Quincy*, 71 U. S. (4 Wall.) 535 (1866) 30

Walker v. *Whitehead*, 83 U. S. (16 Wall.) 314 (1872) 30
Wolff v. *New Orleans*, 103 U. S. 358 (1880) 31, 40
W. B. Worthen Co. v. *Kavanaugh*, 295 U. S. 56 (1935) 43, 45
Worthen Co. v. *Thomas*, 292 U. S. 426 (1934) 42, 45

TABLE OF STATUTES.

FEDERAL.

Constitution of the United States, Article 1, Section 10 ..... 4, 8, 15, 27, 31

Federal Municipal Bankruptcy Act (First) 47

Federal Municipal Bankruptcy Act (Second) 48, 49

Frazier-Lemke Act 44

Judicial Code, Sec. 266 (28 U. S. C. A., Sec. 380), 2, 60, 61, 63, 73

Judicial Code, Section 274d (28 U. S. C. A., Section 400) 6

NEW JERSEY.

PAGE

Execution Act, Section 35 (2 Comp. Stat. of N. J. (1910), p. 2256; P. L. N. J., 1881, p. 80), 3, 4, 7, 16, 17, 35, 52, 81

Municipal Finance Commission Act (P. L. N. J. 1931, Chapter 340, as amended and supplemented by P. L. N. J. 1932, Chapter 236; Article III-A), 2, 3, 4, 7, 8, 9, 10, 12, 19, 25, 26, 31, 32, 35, 40, 46, 47, 48, 60, 65, 75

Section 211 27

Section 212 ..... 27, 71

Section 351 ..... 45, 75

Section 352 ..... 26, 33, 45, 75

Section 353 76

Section 354 77

Section 355 78

Section 403 45

Section 406 19

P. L. N. J., 1933, Chapter 330 ..... 19, 27

P. L. N. J., 1935, Chapter 195 2

P. L. N. J., 1935, Chapter 258, Section 17 ..... 2, 3, 28, 78-80

School Law, Section 237 (4 Comp. Stat. of N. J. (1910), p. 4804; P. L. N. J., 1903, p. 93), 3, 4, 7, 16, 17, 52, 82

Tax Act, Section 505 (P. L. N. J., 1918, c. 236), 7, 16, 17, 52, 83

AUTHORITIES.

3 COOLEY *on Taxation* (4th Ed.), p. 2483 54

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 448.

DAVID T. WILENTZ, J. H. THAYER MARTIN and WALTER R. DARBY, Etc., *et al.*,

Appellants,

vs.

SOVEREIGN CAMP, WOODMEN OF THE WORLD,

Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

BRIEF OF APPELLEE.

(1) Reference to official report of opinion below:

The opinion of the three-judge court below is reported at 23 Federal Supplement 23 and is entitled "Sovereign Camp, Woodmen of the World *v.* David T. Wilentz, *et al.*"

(2) Statement of the grounds on which jurisdiction of this Court is invoked:

For this statement the court is referred to the "Statement under Rule 12" filed herein by Appellants.

(3) Statement of the case:

This statement of the case is necessary to supplement that contained in the Appellants' brief. Appellee herein is the Sovereign Camp, Woodmen of the World, a fraternal benefit life insurance association organized and existing under the laws of the State of Nebraska. Appellants Wilentz, Martin and Darby are, respectively, the Attorney General, the State Tax Commissioner and the Commissioner of Municipal Accounts of the State of New Jersey, as and constituting a state commission known as the "Municipal Finance Commission"; Appellants Kircher, Weber and Hirsch are members of the Board of Assessors of the Borough of Runnemede, a municipal corporation of the State of New Jersey, and Appellant Spencer is Tax Collector of said Borough.

This is an equitable action heard by a three-judge court convened pursuant to Section 266, Judicial Code (28 U. S. C. A., Sec. 380) wherein Appellee obtained an injunction against the continued operations of the Municipal Finance Commission of the State of New Jersey in the Borough of Runnemede, insofar as such operations interfere with the efforts of Appellee to obtain payment of a judgment of the Appellee against the School District of the Borough of Runnemede, and holding unconstitutional the provisions of Article III-A of the Municipal Finance Commission Act of the State of New Jersey, as amended and supplemented. Said Article III-A was made applicable to school districts co-terminous with a municipality under the protection of the Commission by Chapter 195, P. L. N. J. 1935. Section 17 of Chapter 258, P. L. N. J. 1935, substantially re-enacted said Article III-A with express reference to co-terminous school districts. These statutes,

(Article III-A of the 1931 Act, as amended and supplemented, and Section 17 of Chapter 258, P. L. N. J. 1935), are printed herein as Appendix A (p. 75, *et seq.*), and will hereinafter be referred to as the "stay provisions of the Municipal Finance Commission Act", or collectively as "Article III-A".

The gist of Appellee's action is, that at the time of the issuance of the bonds now owned by Appellee, which form a basis for the judgment herein mentioned, the statutes of the State of New Jersey provided for a plain, speedy, simple and efficient method of collecting the amounts due on said bonds, and that subsequent to the issuance thereof, the Legislature enacted the stay provisions of the Municipal Finance Commission Act, which so impair, diminish and destroy Appellee's right to enforce the collection of its bonds that the Appellee is without adequate remedy, in violation of the contract clause of the Constitution of the United States.

The **complaint** contains four counts. Count one, after alleging jurisdictional facts (all of which are stipulated as true, R. 111), alleges that the Municipal Finance Commission is functioning in the Borough and School District of Runnemede, New Jersey; that the Appellee obtained a judgment on defaulted bonds of the School District in the sum of $21,776.21 on December 5, 1935, in the District Court of the United States for the District of New Jersey in Cause No. L-5224 and that the necessary procedure had been followed under the pertinent provisions of the Execution Act and School Law of said State as they existed at the time the bonds were issued (printed as Appendices B and C hereto, pp. 81, 82) to cause a special tax to be levied under said Acts for the payment of said judgment, but that

the Board of Assessors and Tax Collector of the Borough, and the Camden County Tax Board, have failed and refused to comply with the provisions of said Execution Act and School Law, for the reason that the Municipal Finance Commission is functioning in the Borough and School District and had advised non-compliance, relying upon the stay of remedies provisions contained in said Article III-A of the Municipal Finance Commission Act. It was further alleged that the said stay of remedies provisions of said Act were enacted subsequent to the issuance of the bonds upon which the judgment was rendered, and that such legislation is contrary to, and in violation of, Article I of Section 10 of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts, and that the enactment of said stay of remedies provisions had impaired, diminished and destroyed Appellee's right to enforce the obligation of the contracts contained in its bonds and judgment, leaving the Appellee without adequate remedy. The prayer for relief asked that the Municipal Finance Commission be enjoined by interlocutory and permanent injunctions against functioning in the School District, and that the aforesaid laws providing the stay of remedies be held unconstitutional and void, and that the Board of Assessors and Tax Collector be enjoined from assessing and collecting taxes without including the Appellee's judgment therein, and for general relief.

Count two reaffirms and realleges all the factual allegations contained in count one and further alleges that Appellee owns $70,000 bonds of the School District which have not yet matured and contain no provision for acceleration of principal, and that the Municipal Finance Commis-

sion Act and the operations of said Commission in the Borough and School District have cast a cloud of unenforceability upon Appellee's bonds and that the market value thereof has been greatly depreciated and impaired, and that such condition will continue so long as the Municipal Finance Commission functions in said Borough and School District. The prayer requested the Court to remove the cloud of unenforceability and prevent a multiplicity of suits upon the various installments of bonds as they became due by enjoining, permanently and by interlocutory injunction and temporary restraining order, the functioning of the Municipal Finance Commission in the School District, and general relief.

Count three realleges and reaffirms the general factual allegations contained in counts one and two and alleges facts showing that the municipality had in the past, by and with the consent of the Municipal Finance Commission, compromised past due taxes and assessments and accepted bonds in payment thereof instead of requiring payment of such past due taxes and assessments in cash, such procedure being unlawful and illegal and resulting in a preference to bondholders holding property in the Borough. The prayer of count three requests the Court to enjoin permanently and temporarily the Municipal Finance Commission from authorizing and assenting to the acceptance of any medium, other than lawful money, in payment of taxes, and general relief.

Count four, in general, realleges and reaffirms the general factual allegations contained in counts one, two and three and alleges further facts setting forth a cause of action for a declaratory judgment as to the constitutionality and validity of the stay of remedies provisions of the

Municipal Finance Commission Act under the provisions of Judicial Code, Section 274d (28 U. S. C. A., Sec. 400). The prayer called for a declaratory judgment under said section and for general relief.

The complaint was answered by the Appellants the Municipal Finance Commission and by the Appellant officials of the Borough of Runnemede and the issues were properly raised. The Court found in general (R. 90-95) in favor of the Appellee upon all the jurisdictional and underlying facts, and as to the interference of the Municipal Finance Commission in the attempt of the Appellee to obtain satisfaction of its judgment, that one of the reasons the officials failed to follow the direction of the statutes providing for the satisfaction of judgments, was that the Municipal Finance Commission was operating in the Borough and School District and had advised non-compliance. The Court also found that Appellee's evidence relating to the effect of the legislation upon the value of municipal securities was insufficient to establish a cloud of unenforceability on Appellee's bonds.

The **decree** provides substantially (R. 95-99):

As to count one of the complaint:

(1) for the issuance of an injunction against the Municipal Finance Commission restraining it from functioning in the Borough to the extent that such functioning may be inconsistent with the right of Appellee to enforce its execution, but without prejudice to powers and duties of the Municipal Finance Commission, except as to the stays contained in the Act;

(2) that the stay provisions of the Municipal Finance Commission Act are unconstitutional and void insofar as

they affect the right of the Appellee to enforce its judgment obtained and entered in the court;

(3) that no injunction shall issue restraining the collection of taxes in the Borough without including the amount of Appellee's judgment in such cases; and

(4) that the enforcement of Appellee's judgment shall be in accordance with the laws existing in the State of New Jersey at the time of the issuance and sale of the bonds in question, and that the laws applicable thereto are the Execution Act and the School Law, and that said sections were not repealed by the provisions of the Tax Act of 1918.

As to count two of the complaint:

(5) Denies the prayer of the complaint to enjoin the Municipal Finance Commission from functioning in the School District for the reason that such functioning casts a cloud of unenforceability upon the Appellee's bonds; and

(6) All other relief prayed for under this count was denied as unnecessary in view of the relief granted with respect to count one.

As to count three of the complaint:

(7) Appellants Municipal Finance Commission and Spencer, Borough Tax Collector, were enjoined from making settlement for taxes due and owing to the Borough in any medium except in accordance with the laws of the State of New Jersey.

As to count four of the complaint:

(8) In answer to the prayer for relief under the declaratory judgment act contained in this count, the court ordered, adjudged and decreed the stay provisions of the Municipal Finance Commission Act to be unconstitutional

and void insofar as they affect the right of Appellee to enforce judgments hereafter entered upon Appellee's bonds, or any portion thereof, as being contrary to Article I, Section 10, of the Constitution of the United States; and

(9) The Municipal Finance Commission was permanently enjoined and restrained from functioning in the Borough to the extent that such functioning is inconsistent with the right of Appellee to enforce, in the manner therein stated, executions to be issued upon judgments hereafter entered on bonds of the School District, without prejudice to any of the powers and duties of the Municipal Finance Commission, except as the stays contained in the Act affect the right of Appellee to enforce such judgments.

Facts:

This statement of additional important facts is supplementary to that contained in Appellants' brief.

At the trial of the cause, the testimony submitted was directed almost solely towards showing the detrimental effect of the Municipal Finance Commission Act and the operations of the Commission on the marketability of bonds of municipalities of the State of New Jersey generally, and particularly the bonds of those municipalities under the protection of the Commission. Inasmuch as the Court held that such testimony was insufficient to show a cloud of unenforceability on the bonds, and denied the relief prayed in count two of the complaint, and the Appellee has not appealed from such ruling, that testimony is only helpful in demonstrating that a controversy exists, in support of the declaratory judgment rendered herein.

This case is one of a series of cases brought by holders of bonds against municipalities under the protection of the Municipal Finance Commission. By very adroit maneuvering on the part of the Commission, it had been been impossible to obtain a clear definition of the rights of creditors in view of the Municipal Finance Commission Act, and this case was brought for the purpose of obtaining such a determination. Consequently, in order to conserve the time of the Court, and in order to avoid a repetition of testimony concerning the activities of the Municipal Finance Commission, with which all of the judges sitting in the case were more or less familiar, they all having presided at trials in similar actions, or sat in appeals therefrom, by stipulation (R. 118), there was admitted in evidence the following:

(a) The record, testimony, and exhibits submitted to the United States District Court for the District of New Jersey in an action at law, *Barker* v. *North Bergen,* L-4864;

(b) The record, testimony, and exhibits submitted to the United States District Court for the District of New Jersey in a suit in equity, *Barker* v. *North Bergen,* E-5025;

(c) The record, testimony, and exhibits submitted to the United States District Court for the District of New Jersey in mandamus proceedings, *United States* ex rel. *Christmas* v. *Asbury Park,* L-4851;

(d) The record, testimony, and exhibits submitted to the United States District Court for the District of New Jersey in mandamus proceedings, *United States* ex rel. *Woodmen of the World* v. *Runnemede,* L-5224;

(e) The record, testimony, and exhibits submitted to the United States District Court for the District of

New Jersey in mandamus proceedings, *United States* ex rel. *Norfolk & Western Rwy.* v. *Township of Chester,* L-5013;

(f) The minutes of the Municipal Finance Commission's activities in all municipalities wherein it is functioning, to wit: Asbury Park, Avalon, Brigantine, Chester, Delaware, Fort Lee, Lavallette, Manville, Mount Ephraim, North Bergen, Runnemede and South Hackensack (formerly Lodi Township);

(g) Certain financial records as to the twelve municipalities in which the Municipal Finance Commission is functioning, together with similar statements as to the municipalities of Lakewood, Moonachie, Neptune City, West New York, and Woodbridge;

(h) Statements of cash on hand in current and trust accounts and statements of certain liabilities of the seventeen above named municipalities.

Excerpts from so much of these cases as was deemed helpful in this appeal, are printed in the record on this appeal at pages 155 to 180, inclusive, and the other data referred to above appears in the record at pages 191, *et seq.* For a brief history of the aforesaid litigation, demonstrating the manner in which numerous delays and difficulties have been interposed in suits by creditors, the Court is referred to the affidavit verifying the bill of complaint in support of the application for the interlocutory injunction (R. 37 *et seq.*). In each of these cases, the Municipal Finance Commission filed petitions for leave to intervene, and proceeded to defend the municipality against the action of the creditor, asserting that, by reason of the Commission functioning in said municipalities under the Municipal Finance Commission Act, the Court should withhold judgment on defaulted bonds and interest, and subsequently opposing creditors' attempts to collect such judgments.

Appellant Darby, State Auditor and ex-officio Chairman of the Municipal Finance Commission, testified in *Barker* v. *Township of North Bergen* (R. 156) concerning the personnel and purposes of the Commission, namely, to act in an advisory and supervisory capacity to municipalities coming under its jurisdiction. In that case it was brought out by the same witness, that none of the municipalities under the protection of the Commission had paid out any money to creditors, except in connection with a refunding plan being put through, or where preferential payments had been made through the purchase of bonds with sinking fund, or other trust fund moneys, the acceptance of bonds in payment of taxes, or by plain preferential payments (R. 156, 157, 158). The record (R. 184) shows that in Runnemede $74,000 bonds were purchased with trust funds, and that the Borough had accepted $62,507.01 worth of bonds for taxes (R. 171). All these transactions were approved by the Municipal Finance Commission. This withholding of funds was done notwithstanding the fact that large sums of money were on hand in the treasuries of these municipalities (Ex. 18-e to 18-q inc., R. 199-203). In Runnemede there was $16,207.12 (Ex. 18-i, R. 200) and there would have been an additional $48,670 had the money not been used for the preferential purchase of bonds, as above stated.

Chairman Darby further testified in the *North Bergen* equity case (R. 158-161), that it was the general policy of the Municipal Finance Commission, in the municipalities in which it was functioning, to withhold all payments to bondholders from moneys in the treasury, unless such payment was made in connection with a refunding program, the reason for that policy being that it was difficult to obtain

the consent of creditors to a refunding program unless there was cash to offer as an inducement. In other words, as the Court there stated (R. 160), the Commission was "withholding these funds as a sort of club over the heads of creditors until such time as they may be forced to come in by virtue of this holding out."

In order to implement the purposes and intentions of the Commission as testified to by the Chairman, it was essential that creditors who were unwilling to accept refunding obligations, on the terms and conditions specified by the Commission, should not be able to obtain satisfaction of their claims through legal process. Consequently, the stay provisions were placed in the Municipal Finance Commission Act, and the Commission began intervening in litigation between creditors and the municipalities under its protection.

The evidence in all the aforesaid cases mentioned in the stipulation and admitted as evidence in this case, shows that the defaults, in the municipalities under the protection of the Commission, have occurred by reason of the failure of local officials to perform their statutory duties with respect to the collection of taxes. Tax sales were not regularly held, and tax liens were not regularly foreclosed. That was the case in the Borough of Runnemede, as testified to by the Commission's auditor in the mandamus action (R. 166). Instead of the prompt foreclosure of tax liens, they were allowed to accumulate for five or six years and more. The first action the Municipal Finance Commission should have taken, therefore, was to effectuate the immediate foreclosure of these properties, the sale of same, the application of the proceeds of such sales to defaulted obligations, and the prompt prosecution of the collection

of future taxes in the Borough. Instead of this effective means of helping the creditors, however, the Commission proceeded to compromise taxes and accept bonds in payment thereof, and to purchase bonds with all available funds of the municipality. These actions may have helped the municipalities but were extremely detrimental to creditors, as will be pointed out hereafter.

Appellants have printed, as Appendix A to their brief, a statement of facts in which they attempt to show that the Commission has been diligent in its supervision of this Borough and School District. These statements are taken largely from the minutes of the Municipal Finance Commission and are, therefore, self-serving statements and should be so considered by the Court in determining whether or not, as a matter of fact, the Commission has been lax and dilatory in managing the affairs of the Borough. However, Appellee does not complain of those actions of the Commission which have had for their purpose the conservation of the assets of the Borough, nor which have tended to increase tax collections in the Borough. Appellee's only complaint is that such actions have not resulted in any payments to creditors, and that so long as the Commission continues its present method of operation, Appellee can expect no such payments. The net result of the Commission's efforts has been merely to insure the operation of the Borough and School District, so as to continue to supply to the inhabitants thereof all the services they desire, on the scale they desire them, and at the price they are willing to pay for them.

Excerpts from the minutes of the meetings of the Municipal Finance Commission, in connection with its operation in the Borough of Runnemede, are printed in the record

on pages 203-328, inclusive. In printing these excerpts unfortunately the order of the meetings was reversed so that the minutes of the latest meetings appear first and the first meetings last. A cursory reading of these minutes indicates the difficulties which the Municipal Finance Commission encountered in forcing a tax sale in this municipality, and also indicates that most of the Commission's time was taken up in approving the usual routine affairs in connection with the ordinary expenditures of the municipality, and in approving compromises of delinquent taxes. These routine matters made up the bulk of the considerations of the Commission, from the date it began to function in the Borough, May 18, 1934 (R. 324), until approximately January 1, 1936, when Appellee first began to take legal action with respect to the enforcement of its judgment. These excerpts do not disclose that any action was taken by the Commission looking toward payments on account of, or the refunding of, the bonded indebtedness of the Borough and the School District, until April 3, 1936 (the day of the hearing on the Appellee's mandamus case, (R. 161)), when there was filed with the Commission a proposed plan of refinancing (R. 212). This plan was tentatively approved at the meeting of the Commission on April 17th (R. 212). This is the same plan which was presented in opposition to the Appellee's proceedings for a writ of mandamus at the hearing thereon, when the Appellee was told by Mr. Gary, Auditor for the Municipal Finance Commission, that it provided the only means of any bondholder obtaining any payment (R. 166).

Specific facts and evidence pertinent to the various points of legal argument will be hereafter discussed in connection with each point.

ARGUMENT.

Summary.

Appellee will reply to the points made in Appellants' brief in the order therein appearing. Under Point I will be argued the various phases of the question of the constitutionality of the Municipal Finance Commission Act; under Point II will be discussed the propriety of the Court's rulings setting forth the statutes governing Appellees' remedies; under Point III will be discussed the propriety of the injunction restraining the Municipal Finance Commission and the Tax Collector from authorizing the acceptance of bonds in payment of taxes, and under Point IV will be discussed the jurisdiction of the three-judge court and the right of Appellee to relief in such court.

Italics used are ours unless otherwise noted.

POINT I.

The District Court did not err in enjoining the Municipal Finance Commission from functioning in the Borough and School District insofar as such functioning affects the Appellee in the enforcement of its judgment, or in declaring the stay provisions of the Municipal Finance Commission Act unconstitutional.

In order to determine the question whether the stay of remedies provisions of the Municipal Finance Commission Act actually impairs the obligation of contracts in contravention of Article I, Section 10, of the Constitution of the United States, it is first necessary to determine the rights of Appellee to enforce its judgment against the School

District of the Borough, under the laws in existence at the time the bonds, which are the basis for that judgment, were issued. These laws were Section 35 of the Execution Act (2 Compiled Statutes of N. J. (1910), p. 2256), Section 237 of the School Law (4 Compiled Statutes of N. J. (1910), p. 4804), and Section 505 of the Tax Act (P. L. N. J. 1918; c. 238, p. 865), printed as Appendices B, C and D hereto (pp. 81, 82, 83).

The Execution Act provides, substantially, that whenever an execution issued against a school district is returned *nulla bona*, the officer authorized to execute such process shall serve a copy of the same upon the assessor or assessors of the township in which said school district is situate, and also upon the collector of such township, and, upon receipt of such execution, the assessor shall add to the next regular assessment of school taxes in such school district the amount due on said execution, with interest to the time when the same shall be paid to the officer serving such process; that this tax shall be assessed and collected, at the same time and in the same manner and under the same restrictions, conditions and regulations as other taxes for school purposes are required to be assessed and collected, and that the amount thereof, when collected, shall be a separate fund and shall be paid over, by the collector of the township in which such school district is situated, to the officer serving the process. Section 237 of the School Law is identical with the Execution Act, except that the words "taxing district" are used in place of the word "township". The Tax Act provides for service of a copy of the execution on the county tax board and provides that that body shall add the amount thereof to the amount to be raised by taxation in the taxing district, if the taxing dis-

trict has not already added it, and further provides that the amount of the execution shall be paid to the officer serving the process, on or before the 5th day of June. This date it should be noted is prior to any date fixed by the statute for the payment by the collector of the proceeds of taxes to the various taxing bodies. Consequently, the Execution Act and School Law provide the mechanics and the Tax Act makes definite the date of payment over by the collector.

The net result of these provisions, which became a part of the contract entered into when the bonds were issued, is that in the event of a default on said bonds and judgment being rendered thereon, and execution having been returned unsatisfied, a simple procedure was provided whereby the judgment creditor would be entitled to a special tax for his judgment, the proceeds of which, when collected, would be applicable solely to the payment thereof. The rights of the judgment creditor, under these Acts, were very valuable, as they provided a prompt, speedy and efficient remedy in the event of a default in the payment of municipal obligations. It was held to be a valuable right in *Gabler* v. *Elizabeth*, 42 N. J. L. 79 (Sup. Ct. 1880), where it was stated that the remedies under the Execution Act "imparted substance and life to what was before * * * little better than the mere shadow of a remedy."

In the event the taxing officials ignored their mandatory duty to levy taxes, pursuant to said Acts, the judgment creditor was entitled to a writ of mandamus *as a matter of right* to compel said officials to comply with the statutes. Both the State and Federal courts in New Jersey have so held in many decisions.

Lyon v. *City of Elizabeth*, 43 N. J. L. 158 (Sup. Ct. 1881);

Munday v. *Rahway*, 43 N. J. L. 338 (Sup. Ct. 1881), *affirmed* 44 N. J. L. 395 (E. & A. 1882);
Hourigan v. *Township of North Bergen*, 113 N. J. L. 143 (E. & A. 1934);
Goelet v. *Elizabeth*, Fed. Case No. 5502 (D. C. N. J. 1879);
Moran v. *City of Elizabeth*, 9 Fed. 72 (C. C. D. N. J. 1881);
U. S. v. *City of Elizabeth*, 24 Fed. 851 (C. C. D. N. J. 1885);
President ex rel. *Moran* v. *City of Elizabeth*, 40 Fed. 799 (C. C. D. N. J. 1889).

The reason for these decisions is that the writ of mandamus in such cases is substituted for and performs the functions of proceedings under an execution in the case of a judgment against an individual, or private corporation. The Court of Errors and Appeals of the State of New Jersey in *Hourigan* v. *Township of North Bergen, supra,* said (113 N. J. L. at p. 146):

> "That the granting of a writ of *mandamus*, in a case such as this, will work confusion in the financial affairs of the municipality, does not justify the denial of the application. *It is not a discretionary matter. Mandamus* is the only remedy of the creditor for the enforcement of his contract. This is a well-established doctrine. *Lyon* v. *City of Elizabeth*, 43 N. J. Law 158; *Piscataway Township* v. *First National Bank of Dunellen*, 111 *id.* 412."

These decisions are in harmony with many rulings of this Court as is demonstrated by the following decisions, most of which involve the collection of judgments against public bodies:

Kendall v. *U. S.*, 37 U. S. (12 Pet.) 524 (1838);
Kendall v. *Stokes*, 44 U. S. (3 How.) 87 (1845) (companion case to *Kendall* v. *U. S.*, *supra*);
Kentucky v. *Dennison*, 65 U. S. (24 How.) 66 (1860);
Knox County v. *Aspinwall*, 65 U. S. (24 How.) 376 (1860);
U. S. v. *New Orleans*, 98 U. S. 381 (1878);
Nelson v. *St. Martin's Parish*, 111 U. S. 716 (1883).

That was the state of the law when the Municipal Finance Commission Act was passed in 1931 (P. L. N. J. 1931, c. 340). In 1932 Article III-A, containing the stay provisions, was added by Chapter 236 of the Laws of that year (*infra*, p. 75, *et seq.*). At the time Article III-A was adopted Section 406 of the Act (P. L. N. J. 1931, c. 340) expressly provided "* * * that nothing contained in this Act shall be construed to impair in any way the obligation of any contract or existing remedies by any creditor of any municipality." The law at that time, therefore, did not deprive or attempt to deprive any creditor of any remedy which he might have had to enforce his obligations. Section 406 was amended by Chapter 330 of the Laws of 1933 so as to eliminate the proviso in Section 406 that the Act should not be construed to impair the obligation of any contract or existing remedies. Thus the Legislature clearly indicated its intention to violate contractual obligations by depriving creditors of existing remedies and by preventing the courts from construing the Act as not being intended to apply to pre-existing contracts. It indicates a deliberate violation of contractual rights.

Appellants ignore in their brief this long line of decisions and state (p. 23) that a Federal Court in an action for a writ of mandamus has discretionary power to withhold the writ, relying upon the decision of the Circuit Court of Appeals for the Third Circuit in *City of Asbury Park* v. *Christmas*, 78 F. 2d 1003 (1935), which opinion is quoted in full in their brief. It is indeed difficult to understand why that case was decided as it was, as it is contrary to the rule in the foregoing cases, and contrary to the decisions of other Circuit Courts of Appeals. Since Appellants have gone beyond the printed transcript of the record in discussing this case, it is necessary that we do likewise in order to explain the circumstances that led to that decision.

Relators therein had obtained a judgment against the City of Asbury Park, on February 21, 1935, in the District Court for New Jersey. Execution was issued March 4, 1935, and returned *nulla bona*. On March 6, 1935, relators filed a petition for a writ of mandamus to compel the officials of Asbury Park to levy and assess a tax for the amount due on the judgment and execution, and obtained a rule to show cause returnable on March 8, 1935 (*U. S.* ex rel. *Christmas* v. *City of Asbury Park*, U. S. D. C. N. J. Cause No. L-4851; see Stipulation of Facts, R. 118, par. 21(c)). On January 18, 1935, certain creditors of the City of Asbury Park had filed a petition in the New Jersey Supreme Court to place the city under the protection of the Municipal Finance Commission, and that proceeding was adjourned from day to day to see what would happen in the Federal court case. On March 7, 1935, the day before the hearing on the rule to show cause in the mandamus case, the municipality was placed under the protection of the

Commission. On March 15th, the order for the peremptory writ was issued. An appeal was immediately taken to the Circuit Court of Appeals of the Third Circuit, and, no attempt having been made to comply with the writ in the meantime, on June 13, 1935, the officials of the city were adjudged in contempt. This ruling was also appealed from. The record in the *Asbury Park* case will show that little or no evidence was presented, and no oral testimony was taken regarding the financial condition of the city. A new administration had just come into power in the city after a recall election. The Municipal Finance Commission had been functioning in Asbury Park for only two or three months when the case was submitted on appeal to the Circuit Court of Appeals, and there had been no opportunity for the Circuit Court of Appeals to study the effect of the supervision of the financial affairs of the city by the Municipal Finance Commission, for the Commission had been largely engaged during that period in fighting the suit brought by creditors. There was no way to know what the Commission's performance would be with respect to treatment of, and payments to, bondholders.

This assumption is borne out by the fact that the Court failed to determine any of the several important questions of law that were thoroughly discussed by the briefs of the contending parties. Under the circumstances the Circuit Court of Appeals apparently felt that the Commission should have some time to study the Asbury Park problem, and that since the creditors had waited for some years before bringing the action, a short additional delay would not seriously impair their rights, particularly since no practical benefit in that year would result from sustaining the writ, in view of the fact that the tax levy for that year had

already been made. The Commission contended that equal provision for all creditors had been made therein, the tax bills were out, many taxpayers had paid all or some part of their taxes, and to sustain the writ would result in considerable confusion, without obtaining any money for relators.

We see no great and lasting teaching coming from the *Asbury Park* decision which could in any way be used to change or impair or otherwise limit the rights of judgment creditors of municipalities of the State of New Jersey. The case cited as the precedent for the decision was not in point. The language of the opinion was vague and inept. For instance, the Court could not have meant "equal treatment" literally, for the rights of the various classes of municipal bondholders are not the same. Some bondholders hold general obligation bonds of the municipality, some bondholders hold bonds which are additionally secured by special assessments for local improvements, some bondholders hold obligations for which certain taxes are pledged ahead of the claims of other bondholders on such taxes, and holders of school district bonds are given special preference and security not afforded to holders of bonds of the municipality. It must also be obvious that the Court does not desire that its opinion in the *Asbury Park* case be interpreted as holding that a writ of mandamus is a writ of discretion in all cases, for such a decision would be in conflict with prior express decisions of the Supreme Court of the United States, and the interpretation of the New Jersey statutes by the Court of Errors and Appeals of that state. It is significant that, although the decision has been in the books since 1935, we are unable to find it followed by any other Circuit Court of Appeals.

There is undoubtedly discretion in the Federal Courts over the amount to be raised annually for the purpose of paying a judgment during the life of the writ, but we submit that the Circuit Court of Appeals for the Fifth Circuit has correctly stated the rights of judgment creditors, such as Appellee here, in *U. S.* ex rel. *Metzger* vs. *City of Vero Beach*, 90 F. 2d 70 (1937). There the lower Court had refused to provide for a levy for the full amount of the judgment and had refused to give peremptory relief to the judgment creditor. The District Court intimated, however, its willingness to order a special tax for a portion of the judgment for the current year, retaining jurisdiction with reference to future levies. This procedure was condemned by the Circuit Court of Appeals of the Fifth Circuit and the logic of the opinion on this point is irrefutable (p. 72):

> "The hardship and uncertainty upon a suitor of having to litigate annually for a fractional part of the amount due is apparent. *There should be an end of litigation.* The relator is entitled to equal and exact justice speedily administered. Such should be awarded in a single and entire judgment directing the issuance of a peremptory writ. Whether the entire amount should be raised by a single tax or divided into fractions thereof and raised by two or more levies spread over a reasonable number of years is a matter resting in the sound discretion of the court. United States *v.* City of Key West (C. C. A.), 78 F. 88; East St. Louis *v.* Amy, 120 U. S. 600, 7 S. Ct. 739, 30 L. Ed. 798.
>
> As to the manner in which the discretion is to be exercised, it is well to bear in mind the memorable language of the Chief Justice in Osborn *v.* Bank, 9 Wheat. 738, 866, 6 L. Ed. 204: 'Judicial power, as contradistinguished from the power of the laws, has

no existence. Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law.'

In *State ex rel. Klemm* v. *Baskin*, 111 Fla. 667, 150 So. 517, 518, the court said: 'Whatever discretion, as a general rule, may be vested in the courts to withhold peremptory writs of mandamus as a matter of discretion in certain cases, such discretion can never be exercised by any court of this state to the extent of impairing the obligations of valid contracts, in violation of the state and Federal Constitutions, both of which guarantee a remedy in the courts to all who have lawful contractual obligations to enforce against those who have breached a statutory duty, the performance of which was promised in the terms of an express agreement, the rights growing out of which are enforceable as a matter of legal right, by mandamus, as is the case with public securities.'

In State *v.* Werra Aluminum Foundry Co., 173 Wis. 651, 182 N. W. 354, 355, 22 A. L. R. 1, the court said: 'Judicial discretion should not be exercised to withhold the writ of mandamus to enforce a clear right conferred by statute when no other remedy is available to secure such right. To do so amounts to judicial assumption of legislative prerogatives, emasculates or annuls legislative enactments, and savors of judicial government.'

In *State* v. *Posey*, 17 La. Ann. 252, 87 Am. Dec. 525, the Court said:

'The judiciary is not, by the constitution, invested with legislative powers. It has no authority to deprive the citizen, by its rules, of his legal rights.

'The judge must conform to the law, though he should think that thereby certain citizens would be injured, or that its provisions do not exactly come up to a proper administration of justice.'

See, also, 18 R. C. L. 137, Sec. 52; 38 C. J. 549, Sec. 18; *Gay* v. *Torrance,* 145 Cal. 144, 78 P. 540; *Stinson* v. *Godbe,* 48 Utah 444, 160 P. 280; *Town of Columbus* v. *Barringer* (C. C. A.), 85 F. (2d) 908; *Gowdy* v. *Board of Education,* 89 N. J. Law 137, 98 A. 12; *Rees* v. *Watertown,* 19 Wall. 107, 22 L. Ed. 72; *City of Galena* v. *Amy,* 5 Wall. 705, 18 L. Ed. 560; *Benbow* v. *Iowa City,* 7 Wall. 313, 19 L. Ed. 79; *City of Little Rock* v. *United States* (C. C. A.), 103 F. 418; *City of Sarasota* v. *State* (Fla.), 172 So. 728; Id. (Fla.), 172 So. 732; *Sholtz* v. *United States ex rel. Ben Hur Life Ass'n* (C. C. A.), 82 F. (2d) 780.

The judgment of the district court is reversed, and the cause remanded for further proceedings not inconsistent with this opinion.''

The cases cited by Appellants as being to the same effect as the *Asbury Park* case merely hold that the federal courts have power to fix the number of years that the judgment shall be paid in, and do not refer to the question of whether such writ shall issue.

In contrast to the plain, speedy and efficient remedy existing on the bonds at the time they were issued, the stay provisions of the Municipal Finance Commission Act place insuperable barriers to any recovery by a judgment creditor. Under the aforesaid stay provisions, having reduced his bonds to judgment, the creditor is barred from

enforcing same until he first applies to the Supreme Court of New Jersey or to a Justice thereof, after notice to the Municipal Finance Commission, for permission to institute a suit to mandamus the levy of taxes by the municipality. The Commission may defend the municipality in such an application and undoubtedly would defend if the municipality was levying taxes in accordance with the suggestions of the Commission. Assuming, however, that the judgment creditor is successful in his application over the protest of the Municipal Finance Commission, and that he finally obtains an order authorizing him to bring a suit for writ of mandamus, he finds that he may not bring the suit for his own benefit, but that he must bring it for the benefit of all creditors, whether they hold matured or unmatured obligations, and in that proceeding all other creditors may intervene and assert their claim, and the Court may require the judgment creditor to give such notice and bring in such other creditors, in such manner as the Court shall determine. (Section 352, M. F. C. Act; Appendix A, *infra*, p. 75). Each creditor must prove his claim, which might require jury trials in many cases, as many of the claims would be on open accounts, claims for damages, etc., which would require adjudication. When all the claims are adjudicated and a tax is finally ordered to be levied, the avails thereof are applied to the payment of the state tax, county tax, School District tax and the municipal operating expenses, leaving practically nothing for the creditors. The judgment creditor who has borne the expense of the litigation would receive his *pro rata* share thereof, which, unless he is the holder of a very large percentage of the indebtedness of the municipality, would undoubtedly be a mere fraction of his legal expenses. The following year,

and each year thereafter, the creditor would have the right to repeat the performance until his experience taught him the futility of attempting to enforce his obligation, and he would thereupon be willing to accept any settlement the municipality and Commission offered, regardless of the fairness of such settlement.

In the meantime, the municipality might compromise the delinquent taxes, which funds would, under Section 212 of the Act, as amended by Chapter 330 of the Laws of 1933 (Appellants' Brief, p. 102), be placed in the reserve fund created by Section 211 of the Act (Appellants' Brief, p. 101) for the payment of the principal and interest of the municipality's bonds. The joker in Section 211 is that no money may be withdrawn from that fund for "investment or otherwise" without the approval of the Commission. The moneys in that fund could be used for "investment" in the bonds of the municipality at depressed prices caused by the failure of the municipality and the Commission to make any payments on account of the defaulted principal and interest thereof.

Appellee maintains that these stay provisions of the Municipal Finance Commission Act are unconstitutional and void because:

(a) they infringe upon and impair the jurisdiction of the federal court;

(b) they impair the obligation of the contracts between the debtor and the bondholder contrary to the contract clause of Article I, Section 10 of the Constitution of the United States;

(c) an adequate and efficacious remedy has not been substituted for that withdrawn, and further that

(d) the Municipal Finance Commission Act cannot be sustained as emergency legislation, and

(e) the Municipal Finance Commission Act cannot be sustained as an insolvency act.

These contentions will be discussed in the above order, and in so doing we will controvert applicable arguments contained in the brief of appellants and we will demonstrate that the Municipal Finance Commission Act is but a repetition of numerous attempts by state legislatures to forestall the collection of defaulted municipal bonds, all of which attempts have heretofore been held unconstitutional by the federal courts.

(a) The Municipal Finance Commission Act infringes upon and impairs the jurisdiction of the Federal courts.

Cutting away the camouflaged verbiage from Section 17 of Chapter 258, P. L. N. J. 1935, relating to school districts, this section reads (*infra*, p. 78):

> "No * * * mandamus * * * shall be brought against such school district * * *, except * * * the Supreme Court or a Justice thereof * * * may authorize one or more creditors * * * to bring * * * an action * * * therefor in the Supreme Court, which shall be brought for the benefit of * * * all * * * creditors * * *."

When these cases between creditors and municipalities under the protection of the Commission first arose, the Municipal Finance Commission contended that it was beyond the power of the federal court to render a judgment on defaulted bonds of the municipality under the protection of the Commission. The Circuit Court of Appeals of the Third Circuit, however, held in *Delaware Township* v. *Central-Penn National Bank*, 79 F. 2d 255 (C. C. A. 3rd,

1935), that the Act does not expressly bar actions for judgment on defaulted municipal bonds in the federal court. In that case the Court recognized the restraint which the Act attempted to place upon federal courts by requiring the judgment creditor in the federal court to go to the Supreme Court for its enforcement, saying (at p. 256):

> "The Municipal Finance Act does not forbid a plaintiff to obtain judgment, but provides that the Supreme Court shall decide whether or not execution shall issue."

The above quoted reference to the Supreme Court can only mean the Supreme Court of New Jersey, for the New Jersey Legislature could not confer such extraordinary jurisdiction upon the United States Supreme Court. Counsel for the Commission now concede that the Act does not impair the power of the federal court to issue a writ of mandamus for the enforcement of a judgment rendered by that court, but counsel's belated concession cannot dispose of the fact that there was a controversy before the trial court, which it was justified in deciding and in awarding appropriate relief.

(b) The contract between the School District and Appellee as a bondholder is impaired by the stay provisions of the Municipal Finance Commission Act, contrary to the contract clause of the Constitution of the United States.

The attempted substitution of remedies under the stay provisions of the Municipal Finance Commission Act presents two main questions. First, does the withdrawal of remedies for the enforcement of judgments upon the bonds of the School District impair the obligation of contracts,

and second, has an adequate and efficacious remedy been substituted for the remedies so withdrawn?

Concerning the first question, the phrase "obligation of contracts" has been determined by this Court in innumerable cases to mean the remedies for the enforcement of such contracts as well as the terms of the contract itself. The leading case so far as municipal bonds is concerned is *Von Hoffman* v. *City of Quincy*, 71 U. S. (4 Wall.) 535 (1866). This Court there held that the statutes in effect at the date the bonds were issued were a part of the contract, saying (p. 550):

> "It is also settled that the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. This principle embraces alike those which affect its validity, construction, discharge, and enforcement."

In *Walker* v. *Whitehead*, 83 U. S. (16 Wall.) 314 (1872), this Court said that these propositions were axiomatic (p. 317):

> "The laws which exist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it. This embraces alike those which affect its validity, construction, discharge, and enforcement;
>
> Nothing is more material to the obligation of a contract than the means of its enforcement. The ideas of validity and remedy are inseparable, and both are parts of the obligation which is guaranteed by the Constitution against impairment; * * *"

The inhibition upon the courts to issue a writ of mandamus as provided in the Municipal Finance Commission Act might well have been taken from a statute of Louisiana of 1876, held unconstitutional in *Wolff* v. *New Orleans,* 103 U. S. 358 (1880), *Louisiana* v. *Pilsbury,* 105 U. S. 278 (1881), and *Hubert* v. *Mayor, etc.,* 215 U. S. 170 (1909).

Section 7 of the 1876 Act, set forth in 105 U. S. at p. 283, read in part:

> "* * * and it shall be hereafter incompetent for any court to mandamus the officers of said city to levy and collect any interest tax other than that provided in this act [which was for premium bonds, so-called, which plaintiff refused to accept], or in case of such mandamus, by a receiver or otherwise, to direct the levy and collection of any such tax."

"The act," said the Court in *Wolff* v. *New Orleans,* 103 U. S., at p. 363, "* * * cuts him [the bondholder] off absolutely, unless he will accept the conditions of the proposed plan."

The Court further held (p. 364):

> "* * * It is plain that if the provisions of this act can be sustained as a valid exercise of legislative power, the judgment of the relator is practically annulled or rendered so uncertain of payment as to be of little value."

These cases unequivocally hold that municipal bonds are contracts within the meaning and protection of Article I, Section 10 of the Constitution of the United States and that no state legislature can enact a valid law which takes

from holders of bonds then outstanding the right to compel their payment by mandamus.

The authorities herein cited and quoted might be multiplied many times over, and these authorities are generally reviewed by Mr. Chief Justice Hughes, in *Home Building and Loan Association* v. *Blaisdell,* 290 U. S. 398 (1934).

Edwards v. *Kearzey,* 96 U. S. 595 (1877), is also an interesting and instructive opinion concerning the effect of statutory enactments upon pre-existing contracts, in the light of the contract clause of the Federal Constitution, and the intention of the framers of the Constitution as evidenced by the condition of the Nation at the time of its adoption.

Under the aforesaid decisions, therefore, the stay provisions of the Municipal Finance Commission Act of New Jersey are unconstitutional unless there is substituted a remedy which is equally efficacious with the remedy withdrawn. This brings us to the second phase of this question mentioned above, namely the efficacy of the remedy substituted by the act which we will discuss in the following subdivision.

(c) Bondholders have not been given an adequate and efficacious remedy in substitution for that withdrawn.

We have heretofore analyzed the remedy afforded under the stay provisions of the Municipal Finance Commission Act (*supra,* pp. 25-27). Proof of our analysis of the lack of efficacy of this remedy is found in a recent decision of the Supreme Court of the State of New Jersey in a case involving the default of the Borough of Fort Lee, entitled *State* ex rel. *Phelps et al.* v. *The Borough of Fort Lee et al.* (1938) (unreported, decided July 26, 1938, printed as Appendix E,

infra, p. 84). In that case, certain resident holders of defaulted bonds of the Borough of Fort Lee, being foreclosed from relief under the Execution Act by the decision of the Court of Errors and Appeals in the case of *Hourigan* v. *Township of North Bergen*, 113 N. J. L. 143 (1934), *supra*, applied under Section 352 of the Municipal Finance Commission Act (*infra*, p. 75) for an omnibus writ of mandamus for the benefit of themselves and all other creditors. The amount to be levied for debt service in the year 1936 was agreed upon between the Borough, the Municipal Finance Commission, and the moving creditors. The creditors received no payments pursuant to that writ. In 1937 the proceedings were reopened and again upon consent of all parties an amount was fixed to be included for debt service in the 1937 writ. Thereafter the creditors brought contempt proceedings under the 1936 writ because they had received no money thereunder. The Borough and Municipal Finance Commission filed returns to the 1936 and 1937 writs showing that though the levies for debt service pursuant to the direction of the writs were duly made, the proceeds of the collection of the taxes had been almost entirely dissipated in paying the municipality's portion of state and county taxes, and in paying the school and borough operating expenses and that there was practically nothing left for creditors. The creditors moved to quash the returns, but the Supreme Court upheld the action of the borough and the Municipal Finance Commission, and refused to do so. We quote from that opinion as follows (*infra*, p. 84):

> "Relators, bondholders and creditors of the defendant Borough of Fort Lee, were awarded a writ of mandamus directing the Borough to levy, assess and collect by taxation for the year 1936 the sum of

$132,000 for debt service and to pay the same ratably to all creditors of the municipality. A further peremptory writ of mandamus directed that the sum of $156,560 be assessed and levied for the year 1937 for the same purpose. Defendants, the Municipal Finance Commission, and the Borough and its officers, have filed returns which state that the Borough has assessed and levied the taxes as directed and has collected on account of the 1936 levy the sum of $40,998.11, and has collected no part of the 1937 levy.

The situation appears to be that the defendants have first paid state, and county taxes and the expense of operating the municipal government out of the tax revenues and have then allocated sums to debt service from remaining moneys. We deem this action to be proper in the circumstances. State and county taxes are clearly a prior lien upon tax collections. Booth *v.* Parnell, 12 N. J. Misc. Rep. 413. It is likewise of great importance that the municipality continue to function. 'The safety and health of the citizen are of prime importance and neither can be endangered because a creditor wants his due.' Piscataway Township *v.* First National Bank of Dunellen, 111 N. J. L. 412. The difficulty in making collections of taxes levied is well known and is a matter of which the court will take judicial notice."

The creditors, therefore, instead of obtaining a special tax pursuant to their writ of mandamus which, when collected, was to be paid over to the officer serving the writ for the purpose of paying the amount due on the indebtedness for which the tax was levied, found themselves with a fifth lien on the general taxes of the municipality, a lien which would be satisfied when, as and if the delinquent taxes were collected, and with full authority in the Borough and Municipal Finance Commission to compromise those

delinquent taxes in such a manner that the creditors would never receive one cent as a result of the Court's process.

Had the creditors in that case been able to proceed under the Execution Act, they would have had a special tax for the payment of their obligations, and their obligations would have been the only charge against that tax, for the statute directs that taxes levied pursuant to the Execution Act, shall be collected and paid over by the Collector to the official serving the execution. The money received as a result of such tax never gets into the borough treasury and never becomes subject to any claims on the general tax revenues by the State, the County or the municipality (*Gabler* v. *Elizabeth*, 42 N. J. L. 79 (Sup. Ct. 1880), *supra*). This practical example of the application of the remedy provided by the Municipal Finance Commission Act proves, beyond a shadow of doubt, that it contains mere form and not substance.

The legislation embodied in the Municipal Finance Commission Act is not new in principle in New Jersey. In the 1870's several municipalities in New Jersey were in default. At that time the Legislature attempted to take away the remedies, afforded by the Execution Act, by limiting the power of the courts to issue writs of mandamus thereunder against municipalities. This legislation was declared unconstitutional in *Munday* v. *Rahway*, 43 N. J. L. 338 (Sup. Ct. 1881), *affirmed* 44 N. J. L. 395 (E. & A. 1882). Because of the similarity of the legislation under consideration in that case and that now under consideration by this Court, we quote from the opinions.

In the lower court (Sup. Ct.) Justices Reed, Dixon and Parker held that, in the case of the enforcement of a judgment against the municipality, a writ of mandamus com-

pelling a tax levy issues as a *matter of right*. After reaching that conclusion, the court went on to say (43 N. J. L. at p. 343):

> "It remains to consider whether the act of 1880, if enforced, would deprive him of that remedy.
>
> This statute requires the court to ascertain—1: the total indebtedness of the municipal corporation, the time when payable and the rate of interest payable thereon; 2: the real value for purposes of taxation of the taxable property within such corporation; 3: the amount required to be raised within such corporation for necessary expenses for municipal and other purposes during the current year; and to determine, 4: the highest rate of taxation capable of being imposed on such corporation without injury to the interests of the creditors of the corporation whose claims are not yet due. Then the *mandamus* must direct the raising of no more than the highest rate so determined will realize; and the sum so raised is to be brought into court and distributed *pro rata* among the relator and such other judgment creditors of the corporation as shall apply and make proof of their judgments. This process is to be repeated annually until the claims so proved are satisfied.
>
> It is impossible to give effect to this legislation consistently with the relator's former rights. Its central feature is the protection of the interests of creditors whose claims are not yet due. Before its passage, the court, on the application of the relator, would have considered only the amount of his judgment, and would have commanded that to be raised, regardless of outstanding debts. In City of Galena *v.* Amy, 5 Wall. 705, an effort was made to restrain the court from issuing a *mandamus* for the levy of a tax to satisfy a judgment, because of the diminished

revenues of the city and the disproportionate magnitude of its debt. But the court declared: 'We can give no weight to considerations of this character when placed in the scale as a counterpoise to the contract, the law, the legal rights of the creditor and our duty to enforce them.' Such was the language of the Supreme Court of the United States concerning a suitor who had no rights in his remedy save as they inhered in the obligation of his contract. With less hesitation, if there could be any hesitation in either case, would it be applicable in a court where the specific remedy is as inviolable as the contract itself. But, according to this statute, these considerations thus ignored are to be held paramount to the relator's demands. He who before was, among creditors, preferred in right because first in time, must now be subordinated to those whose unripened claims should naturally be postponed to his debt. Thus the act would strip him of his priority, and attempts what, in Martin *v.* Somerville Water Power, 3 Wall., Jr., 206, was decided to be beyond legislative power. It is as if the legislature enacted that no execution should issue to enforce a pre-existing judgment to the prejudice of the interests of creditors whose claims were not yet due. Certainly no one would contend that such a law could be valid; nor would it be saved from invalidity because it substituted for the absolute right to execution a conditional and less advantageous remedy. A law, to be forbidden, need not deprive the party of *all* remedy; it is enough if it take away *any* remedy to which he was entitled. And by the term 'remedy' is here meant, not the form, nor perhaps the *forum* (Newark Savings Ins. *v.* Forman, 6 Stew. 436), in which the creditor is to seek redress, but the substance of his right to resort to the person or any property of his debtor for satisfaction. Rader *v.* Southeasterly Road District, 7 Vroom 273.

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> Again, it is urged that the writ of *mandamus* is a prerogative writ, which, without this statute, might be issued or withheld in our discretion, and consequently may now properly be denied, except on conditions which will meet the provisions of the act. But such was not the range of our discretion in the class of cases for which the writ is now invoked. The right of judgment creditors of municipal bodies to this writ was about as clearly defined as is that of any suitor to any writ which does not issue of course. The writ had become substantially a private remedy in these cases. The court was bound to allow it whenever the proper facts were shown, and those facts were not such as this law contemplates. If the legislature can control the discretion of the court as to the necessary facts, then it can deprive the party of his remedy; if the court yields to an attempt at such control, the same result is equally accomplished.
>
> We are constrained to declare this act unconstitutional."

The Court of Errors and Appeals in affirming this ruling said (44 N. J. L. at p. 414):

> "It thus appears that at the point of time at which the defendant in error became the creditor of the city, his remedies, in default of payment of his debt, were these: first, seizure under execution on leviable property belonging to the city; second, service of a copy of his execution on the collector of the city, and payment out of the first corporate moneys coming to his hands; third, in case the city council refused to impose a tax in order to raise money to pay the judgment, an application to the Supreme Court for a mandamus."

(This is precisely the remedy afforded Appellee by the New Jersey law when its bonds were issued.)

Of the terms of the subsequently enacted statutes there under consideration providing that the Court should exercise discretion in granting the writ and that its issuance and the proportion of the proceeds thereof should depend upon other creditors, the Court said (44 N. J. L. at p. 415):

> "Assuming for the moment, for the purpose of exposition, that the authority to impose taxes in order to pay the public debts of the corporation, as it was lodged in the common council when these bonds were issued, was irrepealable, so far as related to past debts; that the defendant, as a creditor, had the legal right to require, by the means of a mandamus, such right of taxation to be put into effect in his favor, there would seem to be no reasonable ground for a doubt that this law of 1880, just referred to, is an invasion of the constitutional rights of the bondholder. Viewing the matter from the standpoint of the assumptions just stated, it would obviously follow that having originally a complete and highly effective remedy, the creditor has been turned over to a remedy utterly inadequate and altogether precarious; for, instead of a right to a judicial order upon the municipal authorities to raise, by taxation, the amount of the moneys due him, he is, by this later legislation, enforced to accept, from year to year it may be, a quota of such sum as a judicial tribunal may, in its discretion, declare can be realized from taxation without injury to the interests of creditors whose debts have not matured. The substitution of such a means of redress as this latter one for the assumed right of the defendant to a mandamus enjoining the imposition of a special tax in his favor, would be so clear an invasion of his constitutional prerogative, that, to my mind, the subject will admit of no argument. Such a result will be assumed as a self-evident proposition; and, conse-

quently, the only questions that are debatable are, whether the municipal franchise to tax, and the right of a creditor to a *mandamus* to compel its exercise, was, in a constitutional point of view, beyond the sphere of subsequent legislation."

The remainder of the opinion is devoted to a discussion of whether a writ of mandamus to enforce a judgment is a writ of right or a writ of discretion. The Court held it to be a writ of right on the authority of *Galena* v. *Amy*, 72 U. S. 705 (1866), and *Wolff* v. *New Orleans*, 103 U. S. 358 (1880).

The Supreme Court of Florida in *State* ex rel. *Buckwalter et al.* v. *City of Lakeland*, 112 Fla. 200 (1933), held that where a bondholder had a right to a writ of mandamus to compel full payment out of a fund on hand, a statute passed subsequent to the issuance of his bond limiting his right to a writ for only his *pro rata* share of the fund was unconstitutional.

(d) The Municipal Finance Commission Act cannot be sustained as emergency legislation.

Appellants advance the theory that the Municipal Finance Commission Act and the stay provisions therein contained are constitutional on the grounds of emergency, and they cite in support of this contention, the decision of the Court of Errors and Appeals of the State of New Jersey in the case of *Hourigan* v. *Township of North Bergen*, 113 N. J. L. 143 (1934). This was a peculiar decision. The Court consisted of thirteen members. Of this number, six reached the conclusion that the Act was unconstitutional; six reached the conclusion that the Act was constitutional as emergency legislation, relying upon the decision of this

Court in the Minnesota moratorium case, *Home Building and Loan Association* vs. *Blaisdell*, 290 U. S. 398 (1934). The thirteenth judge concurred in the result of the six judges holding the act constitutional, but found that there was nothing in the act limiting its operation to the duration of the existing public emergency. He placed his concurrence on the ground that "the statute does not take away the remedy, but affords the creditor an ample remedy," and expressly stated that it was not necessary in reaching his conclusion to determine whether or not the legislature may deprive the Supreme Court of its power to issue a writ of mandamus (concurring opinion, 113 N. J. L. at p. 152). Thus we have a situation where, although the act is held constitutional, a majority of the court has neither determined that it is valid emergency legislation, nor that it is valid because it substitutes an adequate remedy for the remedy withdrawn. The Appellants, in their brief (pp. 40, 41), admit the interpretation of the case as above outlined, but, by some clairvoyant power, they assert that the thirteenth judge was actually setting forth the views of the six judges who sustained the Act. Appellee emphatically disagrees with that assertion, and is equally certain that the six judges who sustained the constitutionality of the Act on emergency grounds were in error in their interpretation of the Minnesota moratorium case. That case never stood for the sweeping proposition ascribed to it by these judges, and, moreover, it has been clearly limited by more recent decisions of this Court.

The statute in the Minnesota case provided that in mortgage foreclosure proceedings, prior to the expiration of the period of redemption, the mortgagor might apply to the court for an extension thereof to such time as the court

might deem equitable, but in no case beyond May 1, 1935. The court was required to find the reasonable income or rental value of the property, and as a condition to extension, order the mortgagor to pay all or a part of that value on taxes, insurance, and upon the mortgage. The statute was in the nature of emergency legislation, effective for a very brief period, and while it changed the remedy which the law had theretofore provided for the enforcement of mortgages, by depriving the mortgagor of the right of possession of the property for a short period, it gave the mortgagor the equivalent of possession, to wit, the rental value during the period possession was withheld from him. That statute was held to be constitutional by this Court by a five to four decision. It was obviously a border line case, and later decisions have clearly demonstrated that fact.

In *Worthen Co.* v. *Thomas*, 292 U. S. 426 (1934), a statute of the State of Arkansas exempted from judicial process the proceeds of insurance policies payable to residents of the state. That act was held unconstitutional, and in distinguishing the Minnesota case, Mr. Chief Justice Hughes said (p. 432):

> "We held in *Home Building & Loan Assn.* v. *Blaisdell, supra*, pp. 434, *et seq.*, that the constitutional prohibition against the impairment of the obligation of contracts did not make it impossible for the State, in the exercise of its essential reserved power, to protect the vital interests of its people. • • • But we also held that this essential reserved power of the State must be construed in harmony with the fair intent of the constitutional limitation, *and that this principle precluded a construction which would permit the State to adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them.* • • •

> In the instant case, the relief sought to be afforded is neither temporary nor conditional. In placing insurance moneys beyond the reach of existing creditors, the Act contains no limitations as to time, amount, circumstances, or need. We find the legislation, as here applied, to be a clear violation of the constitutional restriction."

In *W. B. Worthen Co.* v. *Kavanaugh*, 295 U. S. 56 (1935), this Court had under consideration an Arkansas statute changing the method for the enforcement of taxes in a municipal improvement district. Mr. Justice Cardozo, in delivering the opinion of the Court, said (p. 60):

> "To know the obligation of a contract we look to the laws in force at its making. *Sturges* v. *Crowninshield*, 4 Wheat. 122, 197; *Home Building & Loan Assn.* v. *Blaisdell*, 290 U. S. 398, 429. In the books there is much talk about distinctions between changes of the substance of the contract and changes of the remedy. *Von Hoffman* v. *Quincy*, 4 Wall. 535; *Louisiana* v. *New Orleans*, 102 U. S. 203; *Barnitz* v. *Beverly*, 163 U. S. 118; cf. *Home Building & Loan Assn.* v. *Blaisdell*, *supra*, at pp. 429, 434, where the cases are assembled. The dividing line is at times obscure. There is no need for the purposes of this case to plot it on the legal map. Not even changes of the remedy may be pressed so far as to cut down the security of a mortgage without moderation or reason or in a spirit of oppression. Even when the public welfare is invoked as an excuse, these bounds must be respected."

After pointing out that the changes in the remedies provided for the enforcement of taxes destroyed all the incidents that give value to collateral security, he said (p. 63):

"Upholders of the challenged acts appeal to the authority of *Home Building & Loan Assn.* v. *Blaisdell, supra,* the case of the Minnesota moratorium. There for a maximum term of two years, but in no event beyond the then existing emergency, a court was empowered, if there was a proper showing of necessity, to stay the foreclosure of a mortgage, but only upon prescribed conditions. 'The mortgagor during the extended period is not ousted from possession but he must pay the rental value of the premises as ascertained in judicial proceedings and this amount is applied to the carrying of the property and to interest upon the indebtedness.' 290 U. S., at p. 445. None of these restrictions, nor anything approaching them, is present in this case. There has been not even an attempt to assimilate what was done by this decree to the discretionary action of a Chancellor in subjecting an equitable remedy to an equitable condition. Not Blaisdell's case, but Worthen's (*W. B. Worthen Co.* v. *Thomas, supra*), supplies the applicable rule."

In *Louisville Joint Stock Land Bank* v. *Radford,* 295 U. S. 555 (1935), the Frazier-Lemke Act was held unconstitutional by the Supreme Court. Mr. Justice Brandeis, writing for the Court in that case, said (p. 602):

"For the Fifth Amendment commands that, however great the Nation's need, private property shall not be thus taken even for a wholly public use without just compensation. If the public interest requires, and permits, the taking of property of individual mortgagees in order to relieve the necessities of individual mortgagors, resort must be had to proceedings by eminent domain; so that, through taxation, the burden of the relief afforded in the public interest may be borne by the public."

With these decisions as a guide let us again look to the New Jersey legislation. The sections which are important here are 351, 352 (*infra*, p. 75) and 403 (Appellant's brief, p. 112) of the Municipal Finance Commission Act. Generally, it is provided that no judgment or decree shall be enforced, and no proceedings, by mandamus or otherwise to compel the levy and collection of taxes, shall be commenced against a municipality (or its officers) in which the Municipal Finance Commission is functioning, so long as it shall function, except upon permission of the Supreme Court of New Jersey. The Commission functions until all past due bonds, notes and other indebtedness has been paid or refunded and cash is provided for those maturing in the next year. Section 351, which bars the enforcement of judgments, etc., is expressly limited to "bonds, notes or other obligations" in default.

The New Jersey statute falls within the category of the Arkansas statutes which the Supreme Court held unconstitutional in the two *Worthen* cases, *supra*. The legislation obviously denies the means of enforcing the contracts of the bonds and destroys such contracts. There is no limit of "reasonable conditions appropriate to the emergency." The relief afforded has no "reasonable relation to the legitimate end to which the State is entitled to direct its legislation." The relief is not temporary and conditional, and is not "reasonable from the standpoint of both creditor and debtor." The relief is not "limited to the exigency to which the legislation was addressed." The Act contains no real "limitations as to time, amount, circumstances or need."

We agree with that part of the concurring opinion of the single judge in the *Hourigan* case to the effect that, according to the Act, the "emergency" arises from a default in

the payment of municipal obligations and has nothing to do with any statewide or national emergency, and that the Act continues in effect so long as the municipality is in default. In effect, the New Jersey Act says that upon default of a single bond issue in a single municipality an emergency exists; that, upon the existence of an emergency, payment of contract obligations cannot be enforced; that payment of contractual obligations cannot be enforced so long as the default exists; and that so long as the default exists an emergency exists, etc., etc., *ad infinitum.*

Nowhere in the law is any provision made for payment to the creditor bondholder of interest or part of the interest accruing. Viewed in the light of the decisions above mentioned explaining the Minnesota Moratorium case, the Municipal Finance Commission Act cannot be considered reasonable and directed to a proper legislative end, and is, therefore, unconstitutional.

Mr. Justice Brandeis' comments regarding the Frazier-Lemke Act summarizes concisely the objection of the Appellee to the New Jersey Municipal Finance Commission Act. The Legislature of the State of New Jersey evidently determined that the public interest required that relief be extended to certain of the municipalities of the State, but it did not propose to put the burden of such relief upon the public, in whose interest it was to be given. Rather it chose to put the burden solely upon the creditors of the municipality, and not even upon all creditors, but only upon those whose claims against the municipality were represented by a bond, note or similar obligation. Everyone else would obviously benefit, but only that class would bear the burden.

Considered in connection with the other legislation of the State providing that the state tax, county tax, and operating expenses of the school district and borough are a charge on the borough's tax collections ahead of the bondholders, it is apparent that the only obligations against the taxes which suffer are the bonds. No one makes any sacrifice but the holders of said bonds, and their rights are confiscated in order to provide the relief which the "public interest" requires to be given to the taxpayers and citizens of the borough and school district.

(e) The Municipal Finance Commission Act Cannot Be Sustained as an Insolvency Act.

The whole tenor of Appellants' brief on the constitutionality of the stay provisions of the Municipal Finance Commission Act is, in substance, that the State of New Jersey may enact an insolvency statute applicable to contracts entered into prior to the enactment thereof and that the stay provisions, even if bad themselves, are valid because the entire Act, with its companion statutes, is a beneficial statute within the state's power. Any doubts which may have existed as to whether or not such enactments by state legislatures may be valid on that ground are dispelled by the recent decision of this Court in *Ashton et al.* v. *Cameron County Water Improvement District, etc.*, 298 U. S. 513 (1936), *rehearing denied* 299 U. S. 619 (1936), which held the first Federal Municipal Bankruptcy Act unconstitutitonal.

Mr. Justice McReynolds, for the majority, said (p. 531):

> "The Constitution was careful to provide that 'No State shall pass any Law impairing the Obligation of Contracts.' This she may not do under the

> form of a bankruptcy act or otherwise. *Sturges* v. *Crowninshield,* 4 Wheat. 122, 191. Nor do we think she can accomplish the same end by granting any permission necessary to enable Congress so to do."

For the minority, Mr. Justice Cardozo said (p. 534):

> "Nor was there hope for relief from statutes to be enacted by the states. The Constitution prohibits the states from passing any law that will impair the obligation of existing contracts, and a state insolvency act is of no avail as to obligations of the debtor incurred before its passage. *Sturges* v. *Crowninshield,* 4 Wheat. 122, 4 L. Ed. 529. Relief must come from Congress if it is to come from any one."

As a corollary to their argument on this point Appellants attempt to divert the Court's attention from the legal argument by inferentially accusing Appellee of seeking to obtain a preference at the expense of other creditors and by suggesting that the Municipal Finance Commission Act is necessary in order to avoid such preference and a race of diligence among creditors. In that respect the Court is urged to uphold the act on the theory that it is a "supplement" to the second Federal Municipal Bankruptcy Act, so called, recently upheld by this Court in *United States* v. *Bekins,* 304 U. S. (Adv. Op.) 27 (1938).

Answering the first inference it must be obvious to the Court that this creditor is not seeking a preference over other creditors, but is seeking a remedy open to all other creditors, namely, a special tax for the payment of Appellee's judgment which will secure to it only its *pro rata* share of the tax collections and which will not be subject to the prior lien of state, county, school and municipal operating expenses.

Answering the second inference and the suggestion that the Act should be sustained as a supplement to the Municipal Bankruptcy Act, Appellants' argument involves an assertion of power in a state to supplement a federal bankruptcy act if the state does not think Congress has covered the subject to the state's satisfaction. No argument is necessary to demonstrate that this assertion of power is untenable.

Appellants contend that the Municipal Finance Commission is a receiver of the municipalities under its control under principles of equity receivership. They find little solace for this position in the decisions of the courts of New Jersey. In the *Hourigan* case, *supra,* the court went so far as to say that the Commission was authorized to exercise "powers somewhat akin to those exercised by receivers of insolvent corporations", but apparently did not wish to go so far as to say that the Commission is an actual receiver. Undoubtedly they were correct in refraining from accepting that interpretation of the act. The Commission is not an officer of the court, and is not appointed by the court. It does not take possession of the assets of the municipality as in the case of an equitable receivership, and it renders no account to the court. It has no power to levy local taxes in the municipality, although it may approve or disapprove budgets and otherwise control expenditures for local purposes. The levying of taxes in the Borough of Runnemede is purely a legislative matter which rests in the discretion of the Legislature of the State of New Jersey and as delegated by it to the Mayor and Council of the Borough and the Board of Education of the school district. The Municipal Finance Commission and the Supreme Court of the State of New Jersey can legally enforce

only the levying of taxes that are mandatory and required to be levied by the statutes of the state. Any attempt on the part of the Legislature to delegate discretion in levying taxes to an administrative or judicial agency of the government would be contrary to fundamental constitutional concepts and principles of home rule. *Township of Bernards* v. *Allen*, 61 N. J. L. 228 (E. & A. 1898); *Van Cleve* v. *Passaic Valley Sewerage Commissioners*, 71 N. J. L. 574 (E. & A. 1905).

It is submitted that without unlimited power to direct the raising of revenues in the municipality the Commission could never be on the same footing or occupy a position substantially comparable to a receiver in equity.

Appellants in their brief (p. 37) place great importance upon the decision of the Court of Errors and Appeals of New Jersey in *Vanderpoel* v. *Borough of Mt. Ephraim*, 111 N. J. L. 423 (1933), stating that that decision accepts "the modern doctrine that municipal creditors rank *pari passu* in the case of insolvency." We know of no such "modern doctrine", and we submit that that decision merely follows well established rules of law with respect to the application of the proceeds of taxes to the purposes for which such taxes were levied. The funds the creditor was attempting to levy execution upon in that case were *moneys on hand* which were raised for purposes other than solely the payment of the debts of the municipality. Any contention that the case means anything else is set at rest by a later decision of the same court in *Phelps* v. *Borough of Fort Lee*, 14 N. J. Misc. 895 (Sup. Ct. 1936), *affirmed per curiam* 118 N. J. L. 181 (E. & A. 1937), where it was held that a creditor holding tax anticipation notes of a municipality under the protection of the Municipal Finance Commission was

entitled to preference in payment out of any tax revenues on hand. The Court said (188 Atl. at p. 694):

> "The obligations were issued under legislative authority by force of which the holders thereof had a contractual obligation, which entitled them to payment either out of revenues received, but absolutely from taxes to be collected in the fourth year after issue. Possessed of such an obligation no change thereof can be effected by the Municipal Finance Commission Act or subsequent legislative enactment. Municipal revenues are dedicated funds and those holding a lien thereon are entitled to payment as the funds are realized. *Piscataway Township* v. *First Nat. Bank of Dunellen,* 111 N. J. Law 412, 168 A. 757, 90 A. L. R. 423."

Appellants, moreover, in their brief, confuse the decisions of the courts regarding the rights of municipal creditors, against an open fund, with those against a closed fund. As against the latter, if it is insolvent, they rank on a parity. With respect to the former they must be satisfied in the order in which writs of mandamus are issued against the fund. A closed fund is a trust fund and is administered according to equitable principles. That is not true of an open fund. This distinction is set forth in *State* v. *Carlton,* 103 Fla. 810 (1931) and *Moran* v. *State,* 111 Fla. 429 (1933), in the first of which cases the decisions throughout the country are analyzed.

POINT II.

The District Court did not err in its rulings as to the statutes governing the enforcement of Appellee's judgment.

The District Court included in its findings of fact and decree (R. 96) a declaration that the Appellee's rights to compel a tax levy for the satisfaction of its judgment are governed solely by Section 35 of the Execution Act and Section 237 of the School Law (printed as Appendices B and C, *infra,* pp. 81, 82) and that said sections were not repealed by the provisions of the Tax Act of 1918 (Appendix D, *infra,* p. 83).

Section 505 of the Tax Act deals with the same subject matter as Section 35 of the Execution Act and Section 237 of the School Law. A cursory reading of this section of the Tax Act will be sufficient to determine that it is not inconsistent with the previously enacted Execution Act and School Law. The three sections can be read together and since the Tax Act does not contain an express repealing clause, the former acts are still in effect. It is of little import to the decision in this case that the Tax Act is said to have been inferentially omitted from the enumeration of acts governing the rights of the Appellee, and any error in that respect is one of form and not of substance. There is no possibility of the County Board of Taxation adding the amount of an execution to the municipal tax levy, if such has been added thereto by the assessors of the municipality, for the Tax Act expressly says it shall not if such is the case. The Tax Act simply provides an alternative method of procedure, particularly applicable if the local

tax ordinance has been passed and sent up to the County Tax Board before the execution could be served on the local officials. There is no reversible error in the decree below on this ground.

POINT III.

The District Court did not err in enjoining the acceptance of bonds in payment of taxes and in its ruling as to the rights of Appellee in that respect.

The action of the Borough Tax Collector, by and with the approval of the Municipal Finance Commission, in accepting bonds of the Borough in payment of taxes due the Borough is also a violation of Appellee's constitutional rights and equally detrimental to the efforts of the Appellee to enforce payment of its judgment. The Municipal Finance Commission had passed a resolution in October 1935 discontinuing the practice (R. 60). However, the practice did not cease, for the two instances set forth in the complaint (R. 18, par. 6) were consented to by the Commission on January 31, 1936 and February 14, 1936, respectively (R. 225 *et seq.*; R. 218 *et seq.*).

As stated heretofore, it is contended by the Municipal Finance Commission that the first lien on the taxes collected by the municipality is the lien of the state for its share of the taxes. Second comes the lien of the county. Third and fourth come the liens of the operating expenses of the school district and borough. The bondholders are entitled only to what is left. The testimony of the Commission's Auditor Gary in the mandamus proceeding (R. 185, Ex. Res. 4) indicates that for the past few years the Borough

has been able to collect in taxes only amounts barely sufficient to pay the first four items, leaving nothing for creditors. Appellants thereupon proceed to compromise the taxes that are left at amounts less than the face value thereof, and to accept, at full face value, in payment of the compromised taxes bonds of the Borough, in default as to principal, or interest, or both, thus effectively shutting off the creditors from ever obtaining any payment on account of their defaulted bonds.

Appellee's judgment and bonds are payable in money only and taxes are payable in money, *3* COOLEY *on Taxation* (4th Ed.), p. 2483. Illustrative of this rule is *City of Enterprise* v. *Rawls*, 204 Ala. 528 (1920), an action of assumpsit by the city for delinquent taxes to which defendant pleaded performance of an agreement with the city in crediting the amount of the tax upon a city note held by him. Holding for the city, the court said (p. 529):

> "Taxes are not debts; they do not result from contractual obligations; they are contributions required for the support of the government. Judson on Taxation (2d Ed.) sec. 452; 37 Cyc., p. 706. Unless qualified in the context, the term 'taxes' or 'tax' is used in the sense of money—an exaction to be alone discharged in money. Desty on Taxation, p. 6; Galloway *v.* Town of Tavares, 37 Fla. 58, 19 South 170, 171; 37 Cyc., pp. 706, 708; 1 Cooley on Taxation, p. 15, and note 2; City of Shreveport *v.* Gregg, 28 L. Ann. 836, 837."

To the same effect is *Eggleston* v. *Plowman*, 49 S. D. 609 (1926), and cases cited therein.

In suits brought by holders of bonds of defaulting municipalities the federal courts have, without exception,

held unconstitutional statutes enacted after the issuance of the bonds, authorizing acceptance of bonds in payment of taxes and special assessments.

Crummer v. *City of Fort Pierce*, 2 F. Supp. 737 (S. D. Fla. 1932), held a statute unconstitutional, enacted subsequent to the issuance of plaintiffs' bonds, authorizing Florida municipalities to accept bonds in payment of taxes.

The statutory three-judge court, by Bryant, Circuit Judge, after reciting that the defendant had $3,500,000 of bonds outstanding and had been in default thereon for two years, said (p. 737):

> "All the bonds and coupons of the city, including those held by complainants, were issued prior to the year 1931, and were payable in money only. Chapter 15810, enacted in 1931 (Sp. Acts), purports to make the city's outstanding bonds and matured interest coupons, in lieu of money, receivable in payment of taxes for debt-service purposes. The combined effect of the statute, of compliance with it, and of the city's default upon its bonded indebtedness, has been to depreciate the market value of the bonds and coupons to such an extent that they are being bought for about 20 per cent. of their face value, and are being turned in to the city by landowners at face value in payment of taxes. Complainants, as well as all other bondholders who are not also taxpayers, are prejudiced and discriminated against because they will be compelled either to sell their bonds and coupons at their greatly depreciated market value or to hold them without any reasonable expectation of having them paid off so long as other bonds or coupons are available for payment of taxes.
>
> "In our opinion it is true, as alleged by the complainants, that the bonds when issued were required by law to be paid off only in money. The city charter

simply authorized the city to issue bonds for public improvements, and the form of warrant authorized to be issued to the tax collector clearly implied that only money could be accepted in payment. In the absence of special permission to discharge its bonded debt otherwise, the city was bound to pay in lawful money. Frier *v.* State, 11 Fla. 300; Finnegan *v.* City of Fernandina, 15 Fla. 379, 21 Am. Rep. 292. It is manifest that the city's bonded indebtedness would not be paid in money if the taxes could be discharged on bonds and coupons. Undoubtedly the statute of 1931, if valid, would change the city's obligation under its contract; and we entertain no doubt that it would also impair that obligation. The bondholders, being entitled under their contract to be paid in money, cannot be postponed in their rights until all bonds except theirs have been retired by being used in payment of taxes. As long as taxes can be paid with depreciated bonds, it cannot reasonably be expected that the city will collect any substantial amount of money with which to retire matured bonds and coupons. As a general rule, city bonds cannot be used as a set-off against city taxes. Finnegan *v.* City of Fernandina, *supra*. Of course, the right of set-off exists where the law permits it and the contracting parties agree."

In that case, as here, plaintiffs were bondholders who owned no property in the city.

The *Fort Pierce* case was followed in *McNee* v. *Wall*, 4 F. Supp. 496 (S. D. Fla. 1933). This case went to the United States Supreme Court and was remanded as being within the jurisdiction of the district judge rather than a three-judge court (296 U. S. 547 (1935)). On re-trial, *McNee* v. *Wall*, 13 F. Supp. 326 (S. D. Fla. 1935), the court followed *Crummer* v. *Ft. Pierce*, *supra*, and reiterated the

first decision. *Keefe* v. *City of St. Petersburg*, 5. F. Supp. 132 (S. D. Fla. 1933), to the same effect, was decided on the authority of the *Fort Pierce* and *McNee* cases, *supra*.

The question was again presented in *Harris* v. *City of Miami*, 5 F. Supp. 305 (S. D. Fla. 1932), with the same result. The opinion of the court in that case contains enlightening comments on the legal and economic aspects of this problem.

The same conclusion was reached in another well reasoned opinion in connection with a similar situation in *N. & W. Ry. Company* v. *Boyle, Treasurer*, 12 F. Supp. 522 (N. D. Ohio, 1935).

Attempts are usually made, as is done here by Appellants, to justify the acceptance of bonds in payment of delinquent taxes by asserting that it relieves the home owner of a severe burden and tends to enable him thereafter to pay his taxes currently. In practice, however, it is found that it is made use of to a considerable extent by corporate investing institutions and mortgagees who have dispossessed the home owner through foreclosure proceedings, and these are usually quite capable of paying the taxes on the properties in cash in full. The record in this case amply illustrates that fact. Moreover it appears that many of these corporate taxpayers who took advantage of the opportunity to pay their taxes in bonds, each owned a considerable number of parcels of property. The minutes of the Municipal Finance Commission in this case furnish the following names of such taxpayers who were permitted to compromise back taxes and tc satisfy the compromised amou . in bonds (R. 218-311):

Prudential Insurance Co.
Metropolitan Life Insurance Co.

John Hancock Life Insurance Co.
First Camden National Bank
Gloucester County Mortgage & Guaranty Trust Co.
Fire Association of Philadelphia
Woodlynne National Bank
Woodlynne Building & Loan Ass'n
Camden Optional Bldg. & Loan Ass'n
Atlas Beneficial Loan Ass'n
Barrington Bldg. & Loan Ass'n
Citizens Building & Loan Ass'n
Big Timber Bldg. & Loan Ass'n
Hammonton Building & Loan Ass'n
Blackwood Building & Loan Ass'n
Victory Building & Loan Ass'n
First Mortgage Service Co.

Strangely enough, we also find among the list of those taking advantage of the opportunity of discounting their taxes by paying the same with bonds, two Borough officials, Albert W. Spencer, Tax Collector (R. 273-277), and an Appellant herein, and John Gaunt (R. 257-266), who was Borough Clerk at the time the tax settlements were made.

So, we find in the operations of this Borough, the same vicious circle which was being followed in the cases above cited. The Borough under the protection of and with the active assistance of the Municipal Finance Commission, was withholding payment of any kind on the outstanding bonds, and resisting in court all efforts of creditors to obtain any payment thereon, the effect of such action being to depress the value, and, consequently, the market price of the securities of the borough and school district. This permitted taxpayers including officers of the Borough, to purchase bonds at these depressed prices for use in paying their taxes to the tune of $62,000 (R. 171); it also permitted the

borough to purchase such bonds to the extent of $74,000 face amount at such depressed prices with funds on hand (R. 184) which should have been applied in *pro rata* payments on all the defaulted bonds of the borough, and prevented the accumulation of additional tax money for servicing the debt of the borough and school district.

It is significant to note (R. 171) that the borough accepted no school district bonds in payment of taxes. This appears to have been a further discrimination against holders of school district bonds.

In connection with the purchase of bonds with funds on hand the testimony of Gary, the Commission Auditor (R. 170) is very significant. It is apparent that this use of funds was not indulged in except at the instance of the Municipal Finance Commission for this testimony shows that the "co-operative bondholder" who was active in the borough in this connection was also "co-operative" with the Municipal Finance Commission in other municipalities in which the Commission was functioning.

Appellants in their brief (R. 50) quote the statute authorizing the compromise of taxes which was in force at the time Appellee's bonds were issued and then say that there is nothing in that statute limiting the scope of such compromises to cash. However, the statute quoted says, "said governing body may fix and determine *an amount* to be accepted by such municipality * * * the purchaser shall *pay* to the Collector of taxes * * * *the amount* fixed and determined as aforesaid * * * the *said sum* shall be accepted", etc. Appellee does not contend that the Borough and Municipal Finance Commission have no power to compromise taxes, but does contend that such compromises can be made only for cash, and the injunction issued

by the District Court is directed only against the acceptance of bonds as a part of such compromises.

We have no doubt but that the Court had in mind the purchase of bonds with funds on hand, and the acceptance of bonds in payment of taxes, as well as the active part the Commission was taking in court to defeat creditors in their attempts to collect on defaulted obligations, when it issued its injunction restraining in general terms the Municipal Finance Commission from functioning in the Borough in such manner as to impair Appellee's right to enforce its judgment.

We submit that the lower Court did not err in issuing its injunction in general terms restraining all such action.

POINT IV.

The three-judge court had jurisdiction of the cause.

Appellants urge that the lower Court had no jurisdiction, as a three-judge court acting under Section 266 of the Judicial Code (28 U. S. C., Sec. 380), to hear or determine this suit, and therefore, presumably, this Court has no appellate jurisdiction to review the merits. The argument advanced under Point III of their brief is divided into two parts and is presented as if one part had no relation to the other. It deals, first, with jurisdiction as to the cause of action attacking the stay provisions of the Municipal Finance Commission Act (Counts one and four of complaint, R. 3, 20), and second, with jurisdiction as to the cause of action attacking the provisions concerning the acceptance of bonds in payment of taxes (Count three of Complaint, R. 17). Appellants' contentions will be answered here in the same order and Appellee will also dem-

onstrate the inter-relation of the two, for the question must be treated as a whole as well as from the standpoint of the separate counts of the complaint.

(a) As to the question of jurisdiction with respect to the stay provisions of the statute.

Appellants' argument under this head, when carefully analyzed, amounts to nothing more than a contention that the three-judge court lacked jurisdiction to hear the cause at its inception or to determine it after final hearing, because, they say, the injunction actually decreed against the Municipal Finance Commission is ineffective to carry out the Court's conclusion that the stay provisions are unconstitutional. The legal consequence alleged to flow therefrom is the lack of a substantial question warranting a three-judge court. Appellants pose this problem solely as one of *jurisdiction* of a court under Section 266. (There is no error assigned or urged, for indeed none exists, that the complaint is lacking in equity or that any element of federal jurisdiction is absent.) We proceed to discuss the narrow issue thus presented without in any wise conceding the alleged sterility of the form of injunction decreed.

We submit that Appellants have misconceived the requisite elements of jurisdiction under Section 266. The primary essential of such jurisdiction is a substantial claim of federal unconstitutionality of a state statute or order. *Louisville & N. R. R. Co.* v. *Garrett*, 231 U. S. 298 (1913); *Ex parte Buder*, 271 U. S. 461 (1926); *Ex parte Poresky*, 290 U. S. 30 (1933).

This must be determined by the allegations of the complaint. This rule is well expressed by this Court in *Ex parte Poresky, supra*, (p. 32):

> "The existence of a substantial question of constitutionality must be determined by the allegations of the bill of complaint. *Mosher* v. *Phoenix*, 287 U. S. 29, 30; *Levering & Garrigues Co.* v. *Morrin*, 289 U. S. 103, 105. The question may be plainly unsubstantial, either because it is 'obviously without merit' or because 'its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy.' *Levering & Garrigues Co.* v. *Morrin, supra; Hannis Distilling Co.* v. *Baltimore*, 216 U. S. 285, 288; *McGilvra* v. *Ross*, 215 U. S. 70, 80."

See *California Water Service Co.* v. *Redding*, 304 U. S. (Adv. Op.) 252, 254 (1938).

Although Appellants' argument under sub-division A of their brief (p. 53 *et seq.*) is not clear, there certainly is no basis for attack upon the jurisdiction of the lower Court on the ground that the complaint here is lacking in allegations demonstrating a substantial question of unconstitutionality. All Appellants say, in substance, along this line (p. 56) is that Appellee did not present a cause of action in its complaint entitling it to a decree against the Municipal Finance Commission enjoining enforcement of the stay provisions, because the members of the Commission have no statutory power to enforce or relax the stays. Assuming for present purposes only that the injunction so decreed is ineffective, it is clear that no *three-judge court jurisdictional* defect at the inception of the case could arise from that fact within the test laid down in *Ex parte Poresky, supra.*

The complaint here is most adequate in its allegations to confer jurisdiction in the inception on the Court below.

Counts one, two and four (R. 3, 15, 20) specifically set forth the statutory stay provisions, allege that they are unconstitutional as impairing the obligation of the contract of Appellee's bonds and judgment thereon, set forth facts showing the various interferences of the Municipal Finance Commission in the collection of that judgment by reason of its acting under the stay provisions and its general functioning in the municipality, and show Appellee's damage and lack of any other adequate relief therefrom. These allegations have been analyzed in detail in the Statement of the Case of this brief (pp. 3-6, *supra*). Appellants recognize the existence of this substantial constitutional question, for the stipulation of facts (R. 119, par. 23) establishes that there is a controversy between the parties on the point; appellants devote the first portion of their brief to a defense of constitutionality, and Point III of their brief is written on the express assumption that the stay provisions are unconstitutional (Caption of Point III, p. 53).

Gully v. *Interstate Natural Gas Co.*, 292 U. S. 16 (1934), cited by Appellants (p. 54), has no application to our situation. This was a clear case where this Court found (p. 18) that not only was there no question of validity of a state statute involved, but that the action of the state agency challenged on the face of the bill of complaint was merely an assessment of taxes and not a statute or order within the meaning of Section 266.

There is, then, no basis whatever for the argument that the lower Court had no jurisdiction in the inception in view of the fact that the allegations of the bill of complaint disclose a constitutional question of substance and injunctive relief is sought. Appellants' argument mistakes this rule of jurisdiction.

Appellants further urge, in substance, that a three-judge court had no jurisdiction because the injunction actually decreed does not go as far as Appellee prayed, and because, as issued, it is alleged to be ineffective. It is intimated that jurisdiction was divested, because the Court only enjoined the Municipal Finance Commission from functioning in Runnemede to the extent that such functioning is inconsistent with Appellee's right to enforce its execution, the stay provisions being declared unconstitutional. Having shown that a substantial question of unconstitutionality was presented by the complaint requiring the convening of the three-judge court and that the Court thereby acquired jurisdiction at the inception, it remains to be demonstrated by the Appellee that the lower tribunal was not required to relinquish its jurisdiction at any time during the proceedings by reason of the conclusions which it reached or the relief to which it finally found Appellee was entitled.

Counts one, two and four of the complaint prayed for an injunction restraining the Municipal Finance Commission from *functioning at all* in the School District of the Borough of Runnemede on the ground of the unconstitutionality of the stay provisions. (R. 14, 16-17, 20-21.) Appellants admit (p. 58) that such a complete injunction would be without objection from the point of view of effectiveness, and it must follow therefrom that, had such a restraint been awarded, Appellants, on their own theory, would have been unable to make any argument whatsoever on this issue of jurisdiction. (In this connection it is interesting to note that their argument on the merits seeking to support the constitutionality of the stay provisions (Appellants' brief, Point I) proceeds on the theory that the entire

Municipal Finance Commission Act and companion acts must be treated as an indivisible whole and the validity of the stays is urged on that ground. The injunction on the merits might well have gone, then, to the full extent of the prayers, and the good in the acts would have had to fall with and because of the inseparable bad.) Appellants' jurisdictional contention must rest solely on the basis that the Court below gave an injunction narrower in scope than that prayed for and lost all jurisdiction of the entire case as a result, despite the presence of the essential jurisdictional elements in the complaint as hereinbefore demonstrated.

To state the contention is to refute it. The law is very definitely established that a three-judge court once having obtained jurisdiction by the presence of a substantial federal question, can give relief upon a non-constitutional ground or rest its decision solely on the basis of a local issue, without even passing upon the federal question. *Louisville & N. R. R. Co.* v. *Garrett*, 231 U. S. 298 (1913); *Davis* v. *Wallace*, 257 U. S. 478 (1922); *Sterling* v. *Constantin*, 287 U. S. 378 (1932); *Glenn* v. *Field Packing Co.*, 290 U. S. 177 (1933); *Lee* v. *Bickell*, 292 U. S. 415 (1934); *Railroad Commission of Calif.* v. *Pacific Gas & Electric Co.*, 302 U. S. 388 (1938).

The principle is defined in *Davis* v. *Wallace, supra,* (p. 482):

> "The case made by the bill involved a real and substantial question under the Constitution of the United States and the amount in controversy exceeded three thousand dollars, exclusive of interest and costs, so the case plainly was cognizable in the District Court. In such a case the jurisdiction of

> that court, and ours in reviewing its action, extends to every question involved, whether of federal or state law, and enables the court to rest its judgment or decree on the decision of such of the questions as in its opinion effectively dispose of the case."

Specific illustrations of the application of the rule are found in *Glenn* v. *Field Packing Co.*, 290 U. S. 177 (1933), *supra*, and *Lee* v. *Bickell*, 292 U. S. 415 (1934), *supra*. In the former case plaintiff sued to enjoin the enforcement of a Kentucky statute excessively taxing oleomargarine, on the ground of repugnancy to the Fourteenth Amendment. A three-judge court held that the statute was in reality a prohibition of the sale of oleomargarine in the state, and therefore a violation of the state constitution. The federal question was not decided. Defendant appealed to this Court, and the basis of the decision of the lower Court was found to be valid and within the jurisdiction of such three-judge court.

In *Lee* v. *Bickell*, *supra*, a bill was brought to restrain the enforcement of a Florida stamp tax statute with reference to certain documents of plaintiff's, on the ground of violations of the due process and commerce clauses of the federal constitution. The three-judge court held that the documents did not come within the purview of the stamp tax act and that, if the act were otherwise construed, it would be in conflict with the Fourteenth Amendment. This Court held, upon appeal, that the second question should not have been passed upon since decision on the local question was proper and dispositive of the case.

It must follow, *a fortiori*, that a three-judge court has jurisdiction to award relief narrower in scope than that

prayed, where the federal question was decided, and the injunction issued on that ground, as was done in the instant case.

The only authority appellants cite in support of their most unusual jurisdictional theory is *Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co.*, 292 U. S. 386 (1934). There the gas company brought an equity suit in federal court to enjoin, on constitutional grounds, the enforcement of an order made by a state board directing it to supply gas to the packing company at a lower rate and to enjoin the latter from continuing the prosecution of a state court suit to recover the excess in rates paid. The bill presented on its face a substantial constitutional question and a three-judge court was convened. It appeared, however, during the course of the proceedings, that the enforcement of the challenged order was already restrained in the state court litigation, and consequently, the state board was not threatening to and could not enforce it. The only issue remaining—enjoining the state court suit—was held not to require the intervention of a federal court, and the case was dismissed for want of equity jurisdiction. On the gas company's appeal, this Court held, in effect, that the real defect was want of jurisdiction of a three-judge court. Mr. Justice Stone pointed out that such a tribunal, although convened properly as a result of adequate pleading allegations, must relinquish its jurisdiction when it appears "that there was never any basis for relief of any sort against the state officers" (p. 391). That certainly is not the case at bar. There the state officers were already prevented from acting; here they were continuing to act and interfere under the statute. Appellants apparently do not urge that there was no right to relief of any sort against the members of the commission;

on the contrary their entire jurisdictional thesis is based on the contention that they could not be enjoined in the way the lower Court did only because the language of the restraint is ineffective to carry out the decision that the stays are unconstitutional. We submit that such an argument is no valid attack upon the jurisdiction of the Court below for it has nothing to do with jurisdiction.

Moreover, despite the fact that Appellants only urge the ineffectiveness of the form of the injunction on the issue of jurisdiction, we submit that, for all purposes, the injunction as issued is effective and in perfectly proper form in the circumstances. It is found in two parts of the decree: with respect to count one dealing with the effect of the stay provisions upon enforcement of the present judgment (R. 96), and with respect to count four awarding declaratory relief for the future (R. 99). The complete language is "that defendant Municipal Finance Commission be permanently enjoined and restrained from functioning in the Borough of Runnemede, New Jersey, to the extent that such functioning may be inconsistent with the right of the complainant to enforce its execution in the manner herein stated, but without prejudice to any of the powers or duties of the Municipal Finance Commission under the Municipal Finance Commission Act, except as the stays therein contained affect the right of the complainant to enforce its judgment" (R. 96).

The decree of injunction is in the only language which could possibly be used. The stay provisions of the statute are very astutely drawn. They all commence: "Whenever the municipal finance commission shall function in any municipality and so long as it shall continue so to do . . ." (Appendix A, *infra*, pp. 75, 76, 77), and proceed to de-

clare that the stays shall thereupon be operative. It is not unreasonable to surmise that the stay provisions were thus drawn purposely to try to avoid injunctive relief against their operation. The Court below refused to be baffled by such an ingenious circumlocution.

The facts in this case, alleged in the complaint (R. 10-13) and affidavit annexed thereto (R. 26-44) and pointed out in detail in the Statement of the Case (*supra*, pp. 8-14) of this brief, is convincing in demonstrating the interference of the Municipal Finance Commission, by counselling, maneuvering and intervening, in efforts by judgment creditors in the federal courts seeking to satisfy their claims. Such action and execution of policy by the Commission can only find basis in the statute by virtue of the stay provisions. Appellants' conduct, therefore, demonstrates that these stay sections provide for, permit and have resulted in affirmative action under them beyond the so-called automatic incidents of operation which Appellants suggest. We believe the intent of the Court below, in using the injunctive language and form which it did, it having determined that the statute is divisible, was to restrain all such conduct, and at the same time, while declaring the stay sections unconstitutional, to say in effect: "These sections are unconstitutional, and the statute from now on must be considered and executed without them. The Municipal Finance Commission must stop interfering with judgment creditors of the municipality and is no longer to do any acts based upon the policy or the language of the provisions we have struck down." The District Court was forced to use the language of the act in its restraint; its exact meaning and application will have to be determined by that Court as occasion arises. It certainly is not in issue on this appeal.

(b) As to the question of jurisdiction with respect to the provisions concerning the acceptance of bonds in payment of taxes.

Appellants treat the relief sought in count three of the complaint (R. 17) as if it had no connection with that prayed for in the other counts, and consequently seek to treat the question of the jurisdiction of the three-judge court as requiring a separate and distinct basis here from that required with respect to the other counts. On the contrary, the common purpose of all counts of the complaint is clear. All deal with illegal actions by Appellants taken pursuant to unconstitutional sections of the statute challenged by this suit. All of such actions hindered and interfered with Appellee in its efforts to satisfy its judgment under the laws of New Jersey in force at the time these bonds were issued. Therefore, we submit, that a finding of jurisdiction in the three-judge court as to any count permitted it to decide all issues presented by the other counts. *Louisville & N. R. R. Co.* v. *Garrett*, 231 U. S. 298 (1913); *Davis* v. *Wallace*, 257 U. S. 478 (1922); *Railroad Commission of Calif.* v. *Pacific Gas and Electric Co.*, 302 U. S. 388 (1938).

Under the decree as to count three the Municipal Finance Commission and the Borough Tax Collector were enjoined from making settlement for taxes by any medium except in accordance with the laws of New Jersey (R. 98).

Specifically referring to Appellants' argument under sub-division B of their brief (p. 61 *et seq.*), we find no claim asserted that the complaint fails to allege or show the existence of a substantial question as to constitutionality or that the relief granted is ineffective. In fact Appellants

again assume under this head that Section 212 of the Municipal Finance Commission Act (Appendix C to Appellants' brief, p. 102) and action taken pursuant thereto, as alleged in count three of the complaint, is unconstitutional. The sole contention is that the Municipal Finance Commission is here only a colorable defendant and that therefore the application for an injunction against the acceptance of bonds in payment of taxes raises no question calling for the assembly of a three-judge court. The rationale of the argument seems to be that the Borough Tax Collector is the only proper party to be enjoined from accepting bonds in payment of taxes following compromises, despite the fact that, under the statute, he may not do so unless the Finance Commission consents.

Appellants baldly say that joinder of the Commission is colorable but they are unable to cite a single authority in point establishing this astounding conclusion. We submit there is no basis whatever for the characterization. Under Section 212, above referred to, the consent of this state agency is vital to the compromise of taxes and acceptance of bonds in payment thereof. By enjoining them from assenting on the ground of unconstitutionality of the statute and action thereunder, the unlawful practice is stopped at the proper place—the spot where the ultimate authority lies. In fact, if any party might be omitted from the injunction, it would be the Tax Collector and not the Commission for he may only act after the latter has approved.

A case exactly analogous with the situation at bar is *Norfolk and Western Railway Co.* v. *Board of Public Works of West Virginia*, 3 F. Supp. 791 (S. D. W. Va., 1933). An injunction was there sought, on constitutional grounds, against state officers and sheriffs (the county offi-

cers charged by law with the collection of taxes) to restrain the collection of certain taxes levied against the plaintiff. The same line of argument here urged was made to the thee-judge court there, namely, that the sheriffs were the only proper parties to be enjoined and the state officers were colorably joined to oust a one-judge court of jurisdiction. The Court disposed of it as follows (p. 793):

> "It is strongly contended on behalf of the defendants that the sheriffs of the respective counties are, in effect, the only officers sought to be enjoined, as they are the only officers who could actually enforce collection of the taxes involved, and that they are not state officers but are county officers under the Constitution and statute of West Virginia (section 1, article 10, Constitution of West Virginia; Code of West Virginia, chapter 7, article 5, § 1). This contention cannot be maintained because it must be remembered that under chapter 11, article 6, § 18 of the Code of West Virginia the sheriffs act only upon the certificate of the state auditor and cannot levy for collection of taxes until that certificate is received by them. One of the purposes of this suit is to enjoin the auditor from making such a certificate."

Appellants cite *Pleasant* v. *Missouri-Kansas-Texas R. Co.*, 66 F. 2d 842 (C. C. A. 10th, 1933), *certiorari denied* 291 U. S. 659 (1934). There, on appeal from a case tried before one judge, defendants urged that a three-judge tribunal was required because an injunction against the collection of allegedly unconstitutional taxes was sought against state officers as well as the local collecting authorities. The argument was rejected because the Court found that the state officers had completely fulfilled their duties and no longer could do anything which could affect the tax

or its collection and consequently could not prejudice the rights of the plaintiff in any way. It said (p. 844): "No facts are alleged as to further action contemplated by such state officers which it is sought to enjoin; . . . ." The decision is no authority in the instant case because of this vital difference in the facts. It is interesting to note that the Court in the *Pleasant* case, *supra* (p. 844), distinguished *Norfolk & Western Railway Co.* v. *Board of Public Works of West Virginia, supra,* on the ground that in the latter case the state officers still had acts to perform before the local authorities could proceed.

Appellants attempt an argument by analogy on the theory of indispensable and proper parties with respect to federal jurisdiction based on diversity of citizenship. The contention seems to be that the Tax Collector is the only indispensable party and the Municipal Finance Commission is simply an unnecessary party, and therefore the joinder of the latter was colorable. The argument falls, as has already been demonstrated, because the Commission is a necessary party. The scheme of acceptance of bonds in payment of compromised taxes cannot be carried on without the express consent of the Commission. Accordingly, since state officers were sought to be enjoined, and in fact, were restrained, from giving such vital consents, it is apparent that jurisdiction existed in the three-judge court as to count three alone and Appellants' argument is without merit.

It should be noted that Appellants request this Court to reverse the decree below and remand the cause, if it should find that no case was presented which called for Section 266 to come into operation, on the authority of *Gully* v. *Interstate Natural Gas Co,* 292 U. S. 16 (1934)

supra. We submit that, in the event of such a holding the proper procedure would be simply to dismiss the appeal without reversal, for Appellants have already taken an appeal from this same decree to the Circuit Court of Appeals for the Third Circuit, which appeal has been stayed pending the decision of this Court. Such a procedure would be in accord with that followed in *Healy* v. *Ratta,* 289 U. S. 701 (1933), 67 F. 2d 554, 556 (C. C. A. 1st, 1933).

CONCLUSION.

Appellee respectfully contends, for the reasons herein urged, that the decree of the lower Court should be affirmed.

Respectfully submitted,

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Appendix A.

STAY PROVISIONS OF THE MUNICIPAL FINANCE COMMISSION ACT.

New Jersey Laws of 1932, Chapter 236 Supplementing Laws of 1931, Chapter 340.

ARTICLE III-A.

Remedies.

351. Whenever the municipal finance commission shall function in any municipality and so long as it shall continue so to do, no judgment, decree, levy or execution against such municipality or the property thereof for the recovery of the amount due on any bonds, notes or other obligations of the municipality, in the payment of which such municipality has defaulted, shall be enforced until otherwise specially ordered by the Supreme Court or a justice thereof in an appropriate proceeding for such purpose, after notice to the commission, and the enforcement of any such judgment, decree, levy or execution shall be and it hereby is stayed until otherwise specially ordered as aforesaid. (Added by P. L. 1932, Ch. 236, and amended by P. L. 1933, Ch. 330.)

352. Whenever the municipal finance commission shall function in any municipality and so long at it shall continue so to do, no action or proceeding of any kind either direct or ancillary, by way of mandamus or otherwise shall be brought against such municipality or any public officers for the assessment, levy or collection of taxes by or for such municipality and any and all actions or proceedings therefor shall be and they hereby are stayed; except that first, the Supreme Court or a justice thereof, after notice to the commission, may authorize one or more creditors of such municipality to bring and maintain an action or proceeding therefor in the Supreme Court, which shall be brought for

the benefit of themselves and all other creditors of such municipality and in which all other creditors of such municipality shall have the right to intervene and assert their claim and in which all other creditors of such municipality may, and said commission shall, be made parties in such manner and upon such notice as the Supreme Court shall approve; and except that, second, the municipal finance commission may bring and maintain an action or actions by way of mandamus or by any other appropriate proceeding or proceedings for the assessment, levy or collection of taxes by such municipality for the payment of principal and/or interest of the indebtedness of the municipality found to be outstanding as provided in section two hundred and one of this act. Without limiting its power otherwise to direct by mandamus the assessment, levy or collection of taxes, the Supreme Court in any such proceeding may, to the extent which it shall deem just and equitable, afford to the holders collectively of any due and unpaid claims against a municipality any remedy which might be afforded under any other law to any individual creditor in any mandamus proceeding for the assessment, levy or collection of taxes, to the same extent as if there had been an entry of judgment in their favor, issuance of execution and return thereof unsatisfied, service thereof upon public officials and performance of any and all other conditions precedent to the affording of such relief by mandamus under such other law; provided, however, that the court be first satisfied from proof submitted by affidavit or otherwise that the claims for the enforcement of which such remedy is sought are claims upon which a judgment could be obtained. (Added by P. L. 1932, Ch. 236, and amended by P. L. 1933, Ch. 330, and P. L. 1936, Ch. 50.)

353. Whenever the municipal finance commission shall function in any municipality and so long as it shall continue so to do, it may prepare and certify to the governing body of such municipality resolutions providing in substance that any and all moneys collected as taxes by the

municipality over and above an amount sufficient to pay the reasonable current operating expenditures of such municipality (not including therein the principal or interest of any bonds or notes of the municipality) and such capital expenditures, if any, as may be approved by the municipal finance commission as reasonably necessary to preserve the value of the taxable property within such municipality, shall be paid by the municipality to such banks or trust companies as the governing body of the municipality may designate. (Added by P. L. 1932, Ch. 236.)

354. Whenever the Municipal finance commission shall function in any municipality and so long as it shall continue to do so, no action or proceeding at law or in equity shall be brought or prosecuted, the purpose of which is to affect the disposition of property or funds owned or controlled by the municipality, except as provided in this act. If any such municipality has in its possession or under its control, or there is in the possesion or under the control of the commission, any property or funds of such municipality which are or may be available for the payment of interest or principal upon any of the debts of such municipality (over and above the payment of the current operating expenses of the municipality and the maintenance of a reasonable working capital), then such municipality in its discretion may apply, or if directed by the commission shall apply, to the Supreme Court to determine the application and distribution of such property or funds to and among the creditors of the municipality, and in any such case the Supreme Court in its discretion may permit an application for relief of the same character to be made by any creditor of the municipality. In any such proceeding all creditors of the municipality shall be made parties thereto in such manner and upon such notice by publication or otherwise as the Supreme Court shall approve, and any creditor may appear therein and assert his rights to receive all or any part of such property or funds. In case any such proceeding shall be instituted, the Supreme Court may direct the municipality to make no payments from any of such mon-

eys so available until the determination of the proceeding or until permitted by the Supreme Court. Unless and until such a direction shall be made, payments may be made by such municipality on account of principal and interest as the municipality may determine and as may be approved by the Municipal Finance Commission. (Added by P. L. 1935, Ch. 191, and amended by P. L. 1935, Ch. 314.)

355. Upon the application of any creditor made upon notice to the municipality and the commission, the Supreme Court may vacate, modify or restrict any statutory stay contained in this article. (Added by P. L. 1936, Ch. 50.)

Laws of 1935, Chapter 258.

17. Remedies. Whenever the commission shall function in a municipality having a school district coterminous therewith which is governed by the provisions of Article VII of the school law,

(a) no judgment, decree, levy or execution against such school district or the property thereof for the recovery of the amount due on any bonds, notes or other obligations of the school district, in the payment of which such school district has defaulted shall be enforced until otherwise specially ordered by the Supreme Court or a justice thereof in an appropriate proceeding for such purpose, after notice to the commission, and the enforcement of any such judgment, decree, levy or execution shall be and it hereby is stayed until otherwise specially ordered as aforesaid;

(b) no action or proceeding of any kind either direct or ancillary, by way of mandamus or otherwise, shall be brought against such school district, municipality, or any public officers for the assessment, levy or collection of taxes for such school district and any and all actions or proceedings therefor shall be and they hereby are stayed except that first, the Supreme Court or a justice thereof, after notice to the commission may authorize one or more creditors of such school

district to bring and maintain an action or proceeding therefor in the Supreme Court, which shall be brought for the benefit of themselves and all other creditors of such school district and in which all other creditors of such school district shall have the right to intervene and assert their claim and in which all other creditors of such school district may, and said commission shall, be made parties in such manner and upon such notice as the Supreme Court shall approve; and except that, second, the commission may bring and maintain an action or actions by way of mandamus or by any other appropriate proceeding or proceedings for the assessment, levy or collection of taxes for such school district for the payment of principal and/or interest of the indebtedness of the school district found to be outstanding as provided in section one of this act; without limiting its power otherwise to direct by mandamus the assessment, levy or collection of taxes, the Supreme Court in any such proceeding may, to the extent which it shall deem just and equitable, afford to the holders collectively of any due and unpaid claims against a school district any remedy which might be afforded under any other law to any individual creditor in any mandamus proceeding for the assessment, levy or collection of taxes, to the same extent as if there had been an entry of judgment in their favor, issuance of execution and return thereof unsatisfied, service thereof upon public officials and performance of any and all other conditions precedent to the affording of such relief by mandamus under such other law; provided, however, that the court be first satisfied from proof submitted by affidavit or otherwise that the claims for the enforcement of which such remedy is sought are claims upon which a judgment could be obtained; (As amended by P. L. 1936, Ch. 251.)

(c) no action or proceeding at law or in equity shall be brought or prosecuted, the purpose of which is

to affect the disposition of property or funds owned or controlled by the school district, except as herein provided; if any such school district has in its possession or under its control, or there is in the possession or under the control of the commission, any property or funds of such school district which are or may be available for the payment of interest or principal upon any of the debts of such school district (over and above the payment of the current operating expenses of the school district and the maintenance of a reasonable working capital), then such school district in its discretion may apply, or if directed by the commission shall apply, to the Supreme Court to determine the application and distribution of such property or funds to and among the creditors of the school district and in any such case the Supreme Court in its discretion may permit an application for relief of the same character to be made by any creditor of the school district; in any such proceedings all creditors of the school district shall be made parties thereto in such manner and upon such notice by publication or otherwise as the Supreme Court shall approve, and any creditor may appear therein and assert his rights to receive all or any part of such property or funds, in case any such proceeding shall be instituted, the Supreme Court may direct the municipality to make no payments from any of such moneys so available until the determination of the proceeding or until permitted by the Supreme Court; unless and until such a direction shall be made, payments may be made by such municipality on account of principal and interest as the municipality may determine and as may be approved by the Municipal Finance Commission;

(d) upon the application of any creditor made upon notice to the school district and the commission, the Supreme Court may vacate, modify or restrict any statutory stay contained in this article. (As amended by P. L. 1936, Ch. 251.)

Appendix B.

SECTION 35 OF THE EXECUTION ACT.

2 N. J. Compiled Statutes (1910) p. 2256, Section 35.

35. Execution against school district; service on township assessors and collectors; levy of tax.—Sec. 1. That when any execution shall be issued against any school district of this state, or against the trustees of any such school district as a body corporate representing such school district, by any court authorized to issue the same, whether upon a judgment recovered before or subsequent to the passing of this act, and there shall be no property belonging to said school district or body corporate sufficient to satisfy the same liable to be levied on, then the officer authorized to execute such process shall serve a copy of the same upon the assessor or assessors of the township or townships in which said school district is situate, and also upon the collector or collectors of such township or townships; and upon receipt of such copy or copies, it shall be the duty of such assessor or assessors, at the time of the next regular assessment of school taxes in such school district, to assess and levy in addition to said regular school taxes, the amount due upon said execution, with interest to the time when the same shall be paid to the officer serving such process, upon the inhabitants of said school district and their estates, and upon the taxable property therein; and this tax shall be assessed and collected at the same time and in the same manner and under the same conditions, restrictions and regulations upon the assessor or assessors, collector or collectors as other taxes for school purposes are required to be assessed and collected in such school district; and the amount of this tax when collected shall be a separate fund, and shall be paid over by the collector of the township in which such school district shall be situate, or if such school district be situate in two or more townships then by the collector of that township in which the fraction of the school district containing the schoolhouse is situate, to the officer serving the process. (P. L. 1881, p. 80.)

Appendix C.

SECTION 237 OF THE SCHOOL LAW.

4 N. J. Compiled Statutes (1910) p. 4804, Section 237.

237. Execution against boards of education; service; tax to pay.—Whenever an execution shall be issued against the board of education of a school district or of a union-graded school by any court authorized to issue the same, upon a judgment recovered either before or subsequent to the passage of this act, and there shall be found no property belonging to said school district or union-graded school sufficient to satisfy the same liable to be levied on, then the officer authorized to execute such process shall serve a certified copy of said execution upon the assessor or assessors of the taxing district or districts in which said school district or union-graded school shall be situate, and also upon the collector or collectors of such taxing district or districts. Upon receipt of such copy or copies such assessor or assessors shall, at the time of the next regular assessment of school taxes, assess upon the inhabitants of said school district and their estates, and upon the taxable property therein, in addition to the regular school taxes, the amount due upon said execution, with interest thereon to the time when the same shall be paid to the officer serving such process and the collector or collectors shall levy and collect the same, and said amount, when collected; shall be a separate fund, and shall be paid over by said collector to the officer who shall have served said process. (P. L. 1903 [2d Sp. Sess.] p. 93.)

Appendix D.

SECTION 505 OF THE TAX ACT.

Chapter 236, N. J. Laws of 1918.

505. The municipal clerk or other proper officer of each taxing district shall, on or before the first day of March in each year, transmit to the county board of taxation a copy of the annual taxing ordinance or resolution, or other evidence showing the amount to be raised by taxation for the purposes of the taxing district. When any execution shall be issued upon judgment against any taxing district, and there shall be found no property sufficient to satisfy the same by levy, the officer shall serve a copy of his execution upon the county board of taxation having jurisdiction over said taxing district, and it shall be the duty of the county board of taxation to add the amount due upon said execution, with interest to the first day of June following, to the amounts certified to it to be raised by taxation in said taxing district, and the amount of said execution and interest shall thereupon also be raised by taxation in said taxing district and paid by the collector thereof on or before the fifth day of June following: provided, however, that if the copy of said execution shall not be served upon the county board of taxation before said board shall have determined and fixed the rate for said taxing district for the year, then the amount shall be included by said board in the amount to be raised by taxation in the next following year, and the interest shall be calculated to the first day of June of such year, unless the amount of such execution and interest shall have been included in the taxing ordinance or resolution with the other amounts to be raised by taxation in said taxing district, or unless the execution shall have been satisfied otherwise.

Appendix E.

(Unreported decision.)

Nos. 223 & 241 January Term, 1938.

NEW JERSEY SUPREME COURT.

THE STATE, *ex rel.* CLAUDIA LEA PHELPS, *et als.*,
Relators,

vs.

THE BOROUGH OF FORT LEE, *et als.*,
Defendants.

Submitted January 19th, 1938; decided July 26, 1938; on motion addressed to returns to writs of mandamus.

Before Justices CASE and DONGES.

For the Relators: WURTS & PLYMPTON, Esq.

For the Defendants: LAWRENCE A. CAVINATO, Esq., WILLIAM A. STEVENS, Esq., and E. J. DIMOCK, Esq. (of the New York Bar).

Per Curiam.

In the above entitled cause we have a motion (No. 223) to quash returns to peremptory writs of mandamus and a counter motion (No. 241) to approve the said returns as filed.

Relators, bondholders and creditors of the defendant Borough of Fort Lee, were awarded a writ of mandamus directing the Borough to levy, assess and collect by taxa-

tion for the year 1936 the sum of $132,000 for debt service and to pay the same ratably to all creditors of the municipality. A further peremptory writ of mandamus directed that the sum of $156,560 be assessed and levied for the year 1937 for the same purpose. Defendants, the Municipal Finance Commission, and the Borough and its officers, have filed returns which state that the Borough has assessed and levied the taxes as directed and has collected on account of the 1936 levy the sum of $40,998.11, and has collected no part of the 1937 levy.

The situation appears to be that the defendants have first paid state, and county taxes and the expense of operating the municipal government out of the tax revenues and have then allocated sums to debt service from remaining moneys. We deem this action to be proper in the circumstances. State and county taxes are clearly a prior lien upon tax collections. *Booth* v. *Parnell,* 12 N. J. Misc. Rep. 413. It is likewise of great importance that the municipality continue to function. "The safety and health of the citizen are of prime importance and neither can be endangered because a creditor wants his due." *Piscataway Township* v. *First National Bank of Dunellen,* 111 N. J. L. 412. The difficulty in making collections of taxes levied is well known and is a matter of which the court will take judicial notice.

We think relators are entitled at this time to no more than to have paid to them their proportionate share of the sums which have been collected on account of the levy directed by the mandamus. This they should have.

In this situation we see no necessity for quashing the returns. Nor does it appear necessary to stamp formal approval upon them. They are not in the nature of final returns, but rather an *ad interim* report upon the status of the cause. We think that for the present they should stand with leave to the parties at all times to make such application to the court as changing circumstances may warrant, and with the obligation upon the defendants, of course, to make all possible effort to attain full compliance.

SUPREME COURT OF THE UNITED STATES.

No. 448.—October Term, 1938.

David T. Wilentz, J. H. Thayer Martin and Walter R. Darby, etc., et al., Appellants, *vs.* Sovereign Camp, Woodmen of the World.	Appeal from the District Court of the United States for the District of New Jersey.

[April 17, 1939.]

Mr. Justice Stone delivered the opinion of the Court.

The question is whether we have jurisdiction to consider the merits of this appeal taken under § 266 of the Judicial Code directly to this Court from the decree of a district court of three judges.

Appellee brought the present suit in equity in the District Court for the District of New Jersey, praying a declaratory decree against the validity of certain provisions of the New Jersey Municipal Finance Commision Act, c. 340, New Jersey Laws of 1931, as amended, and an injunction restraining state and municipal officers from acting pursuant to the Commission Act, on the ground that it impairs the obligation of contract in violation of the federal Constitution by depriving appellee of the remedies existing when the contracts were entered into. The Commission Act provides an elaborate scheme for the control and management of the affairs of any municipality, found by the Supreme Court to be unable to meet its obligations when due, by a commission composed of state officers acting in conjunction with the local municipal authorities. The Act, in its amended form, appears in Title 52, c. 27, §§ 1 to 66, inclusive, c. 24, § 19.1, c. 14, § 32, Title 1, c. 1, § 10, Revised Statutes of New Jersey, 1937.

Appellants, members of the Municipal Finance Commission, and the other appellants, members of the Board of Assessors of the Borough of Runnemede, a New Jersey municipal corporation, and its Tax Collector, were joined as defendants. Decision on an appli-

cation for an interlocutory injunction, presented to the district court of three judges assembled pursuant to § 266 of the Judicial Code, and also on a motion of appellants to remit the case to a single district judge, was reserved, and the court, after hearing, rendered its final decree sustaining appellants' contention that the challenged statute was unconstitutional and granting relief by injunction against all the appellants. The case comes here on appeal under §§ 238 and 266 of the Judicial Code. 28 U. S. C. §§ 345, 380.

Appellants press here the objection made below that the case is not one for a court of three judges as prescribed by § 266 of the Judicial Code, and that consequently this Court is without jurisdiction to pass on the merits of the appeal taken directly from the district court, a contention which requires our consideration of the nature of the cause of action and of the relief sought and awarded. See *Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co.*, 292 U. S. 386.

The bill of complaint states that appellee, a fraternal benefit life insurance association, organized under the laws of Nebraska, purchased on June 1, 1930, school bonds issued by the Board of Education of the Borough of Runnemede, which is coterminous with the school district of Runnemede; that default having occurred in the payment of principal and interest on the bonds remaining unpaid, appellee brought suit upon them in a federal court and on December 5, 1935, recovered a judgment against the Board of Education in the sum of $21,776.21, execution upon which was returned unsatisfied; and that appellee then began in the federal district court for New Jersey a suit for mandamus, which is still pending undecided, to compel the proper officers of the Borough to assess and collect taxes for payment of appellee's judgment.

The bill of complaint further alleges that appellee's contract, acquired by the purchase of the bonds, has been impaired in violation of the contract clause of the Constitution (Art. I, § 10) by the later enactment of c. 195, and § 17 of c. 258, New Jersey Laws of 1935, which extended the stay provisions of the State Municipal Finance Commission Act (§§ 351, 352, 354, Municipal Finance Commission Act, as amended by §§ 8, 9, c. 330, New Jersey Laws of 1933, c. 191, New Jersey Laws of 1935) to a school district whenever the Commission shall function in a municipality which is coterminous with the school district. In that event § 17 stays suits and proceedings for recovery on school bonds of the municipality and stays exe-

cution on judgments in such suits, except that the Supreme Court or one of its justices is given discretionary power on application, prescribed by the statute, to authorize the suit to proceed, or execution to issue, under conditions calculated to secure equality of treatment of all creditors.

Section 103 of the Municipal Finance Act provides that upon petition of a municipality showing that it "is not in a position to meet its obligations when due", a justice of the Supreme Court is authorized to make an order to that effect, whereupon the "commission shall function" in that municipality "with all the powers and duties conferred by this act". It is alleged in the bill of complaint, and was found below, that a justice of the Supreme Court had determined that the Borough of Runnemede was unable to meet its obligations and that the Commission, pursuant to the statute, then commenced to function and has since functioned in the Borough and in its coterminous school district.

As a further impairment of appellee's contract the bill of complaint alleges that in 1930, when the school district bonds were issued, the statutes of New Jersey provided that taxes levied on property within the state should be paid only in lawful money of the United States, but that § 6 of c. 330 of the New Jersey Laws of 1933 authorizes the governing body of a municipality in which the Commision is functioning to compromise and adjust delinquent taxes due the municipality, except claims for taxes in excess of $500, which may not be so compromised without the written assent of the Commission; that acting under these provisions the Commission has given its written assent to compromises previously authorized by the Runnemede Borough Council, whereby bonds were received in payment of taxes due the Borough in excess of $500, thus impairing the security and obligation of appellee's bonds.

The bill of complaint prays a judicial declaration that appellee's right to compel a levy and collection of taxes for the satisfaction of its judgment is governed by § 35 of the Execution Act of New Jersey, 2 Comp. Stat. of New Jersey, p. 2255, and § 237 of the School Law of New Jersey, 4 Comp. Stat. of New Jersey, p. 4804, in force in 1930, when the school bonds were issued; that the statutes assailed, c. 330, New Jersey Laws of 1933, cs. 195 and 258, New Jersey Laws of 1935, all as amended and supplemented, be declared unconstitutional and void as infringing the contract clause; that the Commission be enjoined from functioning in the Borough of

Runnemede and from assenting to the compromise of delinquent taxes of the Borough for any sum less than the full amount due, and that appellant Tax Collector be enjoined from carrying into effect any such compromise; that appellants, the Borough's Assessors and its Tax Collector, be enjoined from assessing and collecting taxes for the year 1936 without including in them the amount of appellee's judgment.

The trial court sustained the allegations of the bill by its findings and granted the relief prayed, except that it declined to enjoin any action by the Assessors and Collector with respect to the assessment and collection of 1936 taxes. In enjoining the Commission from functioning in the Borough the court directed that its decree should be "without prejudice to any of the powers or duties of the Municipal Finance Commission under the Municipal Finance Commission Act except as the stays therein contained affect the right of the complainant to enforce its judgment." The decree in its practical operation thus enjoined no action by the Commission and amounted to no more than a declaration that the stay provisions of the challenged statute were invalid and unenforceable.

By § 266 of the Judicial Code, a suit in which application is made and pressed for an interlocutory injunction "restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission" is required to be heard by a court of three judges constituted as the section prescribes. The section also declares that "a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit." Our jurisdiction to hear the appeal on the merits, which is now challenged, turns upon the question whether the present is "such suit".

The reasons for the adoption of the extraordinary procedure prescribed by § 266 of the Judicial Code in the class of cases defined by it, and the rule that it may be invoked only when the suit is one to restrain state officers, have often been pointed out. *Ex parte Collins*, 277 U. S. 565, *Ex parte Public National Bank*, 278 U. S. 101; *Stratton* v. *St. Louis Southwestern Ry. Co.*, 282 U. S. 10; *Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co.*, *supra*. This requirement is one of substance, not of form, and it is not satisfied by joining, as nominal parties defendant, state officers.

whose action is not the effective means of the enforcement or execution of the challenged statute. See *Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co., supra,* 391.

By its terms § 266 embraces only those cases in which an interlocutory injunction is sought to prevent the operation of a state statute "by restraining the action" of a state officer "in the enforcement or execution of such statute". Here it appears on the face of the bill of complaint, and from the findings, that the statutes assailed as unconstitutional are those prescribing a stay of suit or execution against any municipality and its coterminous school district in which the commission is functioning, and also the statute which permits a compromise of delinquent taxes by such a municipality and school district. The only state officers against whom an injunction is sought are the members of the Commission. But they are clothed with no authority to enforce the challenged statutes and have taken no steps to enforce them. The stays prescribed by the statute become effective with respect to any particular municipality by virtue of other statutory provisions whenever the state Supreme Court finds that the municipality is unable to meet its obligations. The order of the Supreme Court promulgating its finding is the decisive action which calls the stay provisions into operation, and when that action is taken the statute becomes self-executing. The Commission is thus without power to grant or withhold a stay, and as the form of the decree, already noted, shows, there is no occasion to enjoin action by the Commission as the means of preventing operation of the stay provisions.

The Commission is similarly without authority to enforce the provisions of the Act of 1933, authorizing the compromise of delinquent taxes. Its written assent, prerequisite to execution of a compromise which the Commission cannot command, is not an order within the meaning of § 266. *Great Northern Railway* v. *United States,* 277 U. S. 172. The Borough Council, whose members are not state officers and are not parties to the present suit, is the exclusive agency for arranging the compromise. The effective agent for carrying the statute into execution is appellant Borough Tax Collector, who is not a state officer. The functions which the Council and the Collector perform, affecting the collection of taxes for payment of the local school district bonds, are not state, but local functions, and a suit for an injunction restraining such action by local officers is not within § 266. *Ex parte Collins, supra; Ex Parte Public National Bank of New York, supra;* cf. *Spielman Motor Co.* v. *Dodge,* 295 U. S. 89.

Even though the written assent of the Commission, without which there can be no compromise of tax claims in excess of $500, be said to be action in "execution" of the statute, we think this case is not one for a court of three judges, because the injunction sought against the Commission is but incidental to the sole purpose of the suit to prevent the performance by local officers of a local function. The members of the Commission are not necessary parties to the suit, and there is no occasion for relief against them in addition to that sought against the Collector. The Commission, in the performance of its statutory duty, acts only to approve the exercise by local officers of an authority conferred on them as such. A suit to restrain the latter from carrying into execution a state statute by performance of the local function which it authorizes is not to be brought within the purview of § 266 by the expedient of adding as nominal parties state officers whose presence is not necessary to prevent the operation of the challenged statute and whose only action is the approval of that of local officers to be taken under it. In such circumstances their presence in the suit generates no interest which it is the purpose of § 266 to protect and must be regarded as colorable only for the purpose of securing the advantages of proceeding before a court of three judges, as was the presence of the state officers in *Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co., supra,* where it was held that there was no appeal under § 266.

The extraordinary procedure before a court of three judges, designed for a specific class of cases sharply defined by the statute, cannot properly be extended to cases in which there is no substantial basis for relief by injunction restraining the action of state officers in enforcing or carrying into effect a challenged state statute of general application. *Ex parte Collins, supra; Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co., supra,* 391. Here the issue is not one of jurisdiction of the district court as a federal court, see *Ex Parte Poresky,* 290 U. S. 30, 31; *Healy* v. *Ratta,* 292 U. S. 263, but is whether a final hearing by three judges is prescribed by the section and hence whether this Court has jurisdiction to hear the appeal. *Smith* v. *Wilson,* 273 U. S. 388. As the case was not one for which a court of three judges is prescribed by § 266, no appeal lies to this Court and it is without jurisdiction to hear the merits of the appeal.

In the exercise of its appellate jurisdiction, this Court has authority to give such directions as may be appropriate to enforce

the limitations of § 266, and may frame its mandate in such manner as will save to appellants their appropriate remedy by appeal to the proper court. *Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co., supra; Gully* v. *Interstate Natural Gas Co.*, 292 U. S. 16. But as is indicated by the briefs, appellants have already taken an appeal from the decree below to the Court of Appeals for the Third Circuit, and it thus appears that their remedy will be preserved by dismissing the appeal to this Court without more.

The appeal will be dismissed with costs to appellants. See *Mansfield, Coldwater & Lake Michigan Ry. Co.* v. *Swan*, 111 U. S. 379, 387; *Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co., supra.*

Appeal dismissed.

A true copy.

Test:

Clerk, Supreme Court, U. S.